

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1130

Docket Nos. 76-1130; 76-1136

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

B
no.
service

THE UNITED STATE OF AMERICA

Appellee-Plaintiff

-vs-

Mary Jean Askew

Louis Toliver

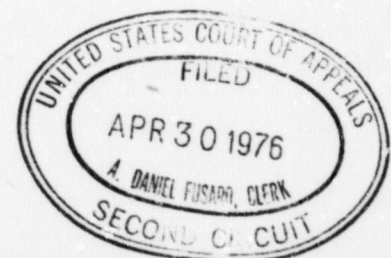
Appellants -Defendants

On Appeal from the United States District
Court for the Western District of New York

APPELLANTS' CONSOLIDATED APPENDIX

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TITLE OF CASE

ATTORNEYS

THE UNITED STATES,

For U. S.:

U.S.

Defendant:

[illegible]

71 Counts

Title 18

Sections - 371, 1341, 2, and 1342

PROCEEDINGS

DATE
1974

Sept. 12	Filed Indictment
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Sept. 12, J. S. 2 made

Sent. 16	Cr 1973-382	Motion for disclosure, etc. Govt informs court it has filed superceding indictment adding an additional deft., Cr-74-244. Adj. to 10/7 for any additional motions in Cr-74-244
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Sept. 17	Filed \$5,000 personal recognizance bond for deft. Toliver
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Sept. 17	Re: Louis Toliver. Deft. in custody on a Bench Warrant, advised the Court he has no funds to retain an atty and requested the Court to assign an atty; the Court announced an atty will be assigned. The Court entered a plea of Not Guilty, Deft was released on a \$5,000 appearance bond, bail limits were set as the Western District of NY and any travel outside the district must be by permission of the Court. Deft. advised the Court he resides at 307 Johnson St., Buffalo has no telephone at that address but can be reached thru his mother, Ernestine Toliver at telephone 838-5816.
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Sept. 19	<p>mother, Ernestine Toliver at telephone 656-5616.</p> <p>Filed cy. 5 of CJA 20--order appointing Edward Heller as atty. for deft. Toliver.</p> <p>CURTIN, J.</p>
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Sept. 17	Govt. requests warrant to issue for deft Toliver. Issued warrant.
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Sept. 20	Filed warrant executed 9/17/74
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Sept. 24 - Filed Ct. Steno's minutes of proceedings of 9/17/74

DATE	PROCEEDINGS
1974	
Sept. 30	For arraignment. Adj. to 10/7/74 (re: Louis Toliver)
Oct. 7	Deft. Louis Toliver being duly arraigned, enters a plea of not guilty to the Indictment. Adj. to 11/4 for motions
Oct. 7	Elgin C. Cook, et al - Return date for any additional motions. Govt. advises Court it has received motions from Defts.; Govt. to file answers by October 21; Adj. to Nov. 4, 1974 for any additional motions by Defts.
Oct. 15	Re: Cainetta Raspberry--for arraignment. Adj. to 10/21/74
Oct. 17	Filed deft. Elgin C. Cook's notice of motion for an order directing Dismissal of indictment, Bill of Particulars, Brady Material, etc. Hearing, Ret. 11/4/74
Oct. 21	Re: Cainetta Raspberry. Deft, present without counsel, enters a plea of not guilty to the indictment. Upon application by the deft. court will appoint counsel. Deft is released on \$2500.00 recognizance bond.
Oct. 21	Filed \$2,500.00 personal recognizance bond for deft. Cainetta Raspberry.
Oct. 21	Return date for Govt's answer to defts' motions. Adj. to 11/4/74
Oct. 24	Filed cy. 5 of CJA 20--order appointing Arthur F. Dobson, Jr. as counsel for deft. Cainetta Raspberry. CURTIN, J.
Oct. 31	Filed Deft. Kate Lee Cook's notice of motion for an order granting dismissal of indictment, Bill of Particulars, severance of trial, discovery and inspection, Brady Material, hearing, etc. Ret. 11/4/74
Nov. 4	For determination of counsel for Louis Toliver - Adj. 11/8/74 9:30 A.M.
Nov. 4	Deft. Rosa McClendon, present with counsel, requests new counsel; Court will appoint new counsel. Eugene O'Connor, Esq., is discharged as counsel in this case. Adj. 12/2/74 for Govt. to file answers to Defts. motions. All defts. who have not been arraigned, will appear Nov. 11, 1974 for arraignment on this Indictment.
Nov. 8	Deft. Louis Toliver appears with counsel. Counsel moves to be relieved at Atty. for the deft. Motion granted. Atty. Edward Heller is discharged as appointed counsel by the Court. Court will appoint new counsel for the defendant. Court directs the Clerk to place on the docket the address and telephone number of Deft. Toliver: Louis Toliver, 307 Johnson St., Buffalo, N.Y., Telephone number 896-3644.
Nov. 8	Deft. Nathaniel Askew being duly arraigned, enters a plea of not guilty to the Indictment. On--application of the defendant previous bail of the Deft. is revoked and the Defendant is released on \$2500.00 Recognizance bond. (that will be for the same)
Nov. 11	Re: Kate Lee Cook--for arraignment. Adj. until 11/18/74
Nov. 11	Re: Elgin C. Cook--for arraignment. Adj. until 12/2/74
Nov. 11	Re: Robert A. Askew--for arraignment. Adj. until 11/18/74
Nov. 11	Re: Louis Toliver--Court directs clerk to place the named deft. on the court docket, court to assign atty.
Nov. 11	Re: Mary Jean Askew, Rosa Bell McClendon, George Raspberry, Cainetta Raspberry--defts, being duly arraigned, all enter pleas of not guilty to the indictment.
Nov. 14	Filed Petition and Order for Writ of H C Ad Proseq., ret. 12/2/74 CURTIN, J for deft, Elgin C. Cook
Nov. 18	Defts Robert Allen Askew and Kate Lee Cook being duly arraigned, both enter pleas of not guilty to the indictment. Bail to continue. Adj. to 12/2/74 at 2:00 for motions.
Nov. 19	Filed Cy. 5 of CJA-20 - Order appointing Thomas C. D'Agostino as counsel for deft. Rosa Bell McClendon--CURTIN, J; cy. to the Adm. office, Orig. ret. to counsel for submission of voucher

CRIMINAL DOCKET

Cr-74-244

7-10061

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
Nov. 19	Filed Cy. 5 of CJA-20 - Order appointing Robert Walsh as counsel for Deft. Louis Toliver, Curtin, J.; Cy. to the Adm. office, Orig. ret. to counsel for submission of voucher		
Nov. 29	Filed Govt's motion to move action for trial		
Nov. 29	Filed Govt's response to certain pre-trial motions filed by the deft. Robert Allen Askew		
Nov. 29	Filed Govt's response to certain pre-trial motions filed by the deft. Nathaniel Askew		
Dec. 2	Filed Govt's response to certain pre-trial motions filed by the defendant Elgin C. Cook		
Dec. 2	Filed Govt's response to certain pre-trial motions filed by the Deft. Kate Lee Cook		
Dec. 2	Return date for motions. In the case of U.S. vs. Louis Toliver, adj. to 1/6/75 for motions. In the Case of U.S. v. Cainetta Raspberry Adj. 1/6/75 for motions; Rosa Bell McClendon, Adj. 1/6/75 for motions. All cases will be heard on oral argument 1/20/1975 at 2:00 P.M.		
Dec. 2	Deft. Elgin Cook being duly arraigned enters a plea of not guilty to the Indictment.		
Dec. 5	Filed Writ of Habeas Corpus Ad Prosequendum, executed for Elgin Cook, 12/3/74		
Dec. 9	Re: Louis Toliver. Deft present with counsel. Bail to continue. Adj. to 1/6 for defense motions.		
1975			
Jan 7	Filed deft Rosa Bell McClendon's notice of motion for dismissal of indictment, order suppressing use of deft's GJ testimony, etc. ret. 1/20/75.		
Jan 6	Return date for motions. No appearances for defts. Adj. to 1/20/75 at 2:00 pm for oral argument on motions.		
Jan. 6	Filed Deft. Louis Toliver's notice of motion for disclosure, etc., discovery and inspection, production, Brady material, handwriting analysis, at Govt. expense, bill of particulars, etc. ret. 1/20/1975		
Jan. 14	Filed Govt's response to Pre-Trial motions filed by the defendant, Louis Toliver--		
Jan. 14	Filed Govt's response to Certain Pre-Trial Motions filed by Deft. Rosa Bell McClendon		
Jan 14	Filed deft' Cainetta Raspberry's notice of motion for inspection of G J minutes, Brady material, suppression of statement, etc., ret. 1/20/75		
Jan. 16	Filed Govt's response to pre-trial motions filed by deft Cainetta Raspberry		
Jan 20	Govt states they are ready for trial. Wade hearing is necessary. Deft Elgin Cook and George Raspberry are to file memos by 2/18. Govt. to file reply by 3/3. Any other defts who wish are to file motions to inspect Grand Jury Minutes and for dismissal of indictment by 2/18. Govt to respond by 3/3. Hearing on statements given to investigators will be on 1/31 at 10:00 am. All motions for severance are held in		

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
1975			
Jan 20	abeyance.		
	for deft Elgin Cook		
Jan 24	Filed Pet. & Order for Writ of H C Ad Proseq/, ret. 1/31/75	CURTIN, J.	
Jan. 30	Filed subpoena Mr. Joseph Broderick, served 1/27/1975		
Jan 30	Filed Affidavit by Roger P. Williams, AUSA, in regard to Govt's evidence in this case		
Jan 31	Filed Cy. 5 of CJA-21 - Authorization for transcript- Cy. to the Adm. office.		
Jan 31	Hearing on statements given to Investigator James Stewart and Joseph Broderick. Court releases Patrick Baker as counsel for deft. Mary Jean Askew, upon her application for new counsel. She is to return to court Feb. 10 with an affidavit before court will appoint new counsel. Court appoints Philip Abramowitz as counsel for Kate Lee Cook, replacing Salvatore Martoche. Only deft. left for this hearing is deft. Elgin C. Cook. Court orders transcript of today's hearing. When completed, court will have meeting with attys. Roger Williams, David Jay and Joseph McCarthy. Proceedings are adj. until further notice by Court.		
Feb 5	Filed cy. 5 of C JA 20--order appointing Philip Abramowitz as counsel for deft. Kate Lee Cook---CURTIN, J. (replacing Salvatore Martoche)		
Feb 6	Filed Writ of H C Ad Proseq, executed 2/4/75 for deft Elgin C. Cook		
Feb 10	Filed statement of Mary Jean Askew as to financial status, and requesting assignment of counsel		
Feb 10	Re: Mary Jean Askew--deft present without counsel. Court will appoint counsel.		
Feb 13	Filed cy. 5 of CJA 20--order appointing Stephen Lamantia as counsel for deft. Mary Jean Askew CURTIN, J.		
Feb. 18	Filed Ct. Stenographer's transcript of the proceedings held before Judge Curtin, on 1/31/1975		
Feb. 18	Filed letter to Judge Curtin, dated 2/14/1975, from Atty. Arthur F. Dobson, Jr., Esq., counsel for Deft. Cainetta Raspberry, in regard to the Court's granting counsel a one week extension to file brief.		
Feb. 19	Filed Cy. 2 of CJA-21 - Authorization and voucher for transcript in the amt. of \$100; Orig. to the Adm. office for payment.		
Feb. 24	Filed Deft. George C. Raspberry's notice of motion for an order dismissing the Indictment, etc., ret. 3/3/1975		
Feb. 24	Filed Deft. Cainetta Raspberry's memorandum of Law on Deft's motion for inspection of the Grand Jury minutes and/or Dismissal of the Indictment		
Mar. 3	Filed Govt's memorandum in opposition to the motion of the deft. George C. Raspberry, to dismiss the indictment on the grounds of double Jeopardy (Cainetta Raspberry)		
Mar. 3	Filed Govt.'s memorandum of Law in opposition to defendant's motion for inspection of the Grand Jury minutes and/or dismissal of the indictment		
Mar. 3	Motion by Deft. Raspberry to dismiss the Indictment. Adj. to 3/31/75 for deft. to respond.		
Mar. 3	Return date for Govt. response to memos and response to any motions to dismiss- Defts. Raspberry- George and Cainetta have made motions to which the Govt. has responded. Adj. to 3/31/75 for further reply by defts. Court will set up another meeting with counsel--		

DATE 1975	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
Mar. 10	Filed Decision and Order that Motions by Defendants George Raspberry and Elgin Cook for dismissal on the grounds of double jeopardy - denied; Defts.' motions for inspection of the Grand Jury minutes denied at this time on failure to show particularized need for their examination, and etc.; If counsel for George Raspberry desires additional testimony of any witness or to present any further witnesses, notice in writing shall be given to the Court not later than March 17, 1975; If either counsel for defts. Elgin Cook and George Raspberry desires to attack the voluntariness of the statements given to investigators a memorandum shall be filed not later than March 31, 1975; The Court will consider the appointment of a handwriting expert only if the name, qualifications, background and expected fee of the expert are received not later than March 31, 1975; All motions and briefs in support of the motions shall be received not later than 3/31/75; Upon receipt of the papers on 3/31/75 the Court shall file a further order relating to this case--CURTIN, J.		
Mar. 19	Filed Deft. Cainetta Raspberry's Notice of Motion for an order granting the defendant an inspection of the Grand Jury minutes and / or a dismissal of the indictment, etc., ret. 3/31/1975		
Mar. 21	Filed cy. 5 of CJA 20--order appointing Patrick Baker as counsel for Mary Jean Askew--CURTIN, J.--Nunc Pro Tunc--12/27/73 (Originally appointed by Judge Henderson in open court on 12/27/73, but appointment and voucher form was never drawn up (Cr-1973-382)) Cy. 5 filed in Cr-1973-382.		
Mar. 25	Filed Govt's response to a letter from counsel for deft./Joseph V. McCarthy, dated 3/18/75		
Mar. 25	Filed Govt's further response to to motion of defendant Cainetta Raspberry, made 3/18/1975		
Mar. 31	Re: Cainetta Raspberry--Motion to dismiss indictment. Denied.		
Mar. 31	Discussion of various motions by certain defts. Hearing on 4/11 at 2:00		
Mar. 31	Re: George Raspberry--Defense counsel requests hearing re inspectors Mr. Stewart and Mr. Broderick. Court will decide.		
Apr. 8	Filed order that the motion of the deft, Cainetta Raspberry, to inspect the grand jury minutes and to dismiss the indictment is denied, and that the motion of the defts. Cainetta Raspberry and George Raspberry to dismiss the conspiracy counts of the indictment is denied. CURTIN		
Apr. 8	Filed certificate of service by mail		
Apr. 11	Filed subpoena - James W. Grable, served 4/10/75		
Apr. 11	Hearing. The following defts. are present. George Raspberry, Cainetta Raspberry, Mary Jean Askew, Rosa McClendon, Louis Toliver and Attys Jay, McCarthy, Dobson, Jr. and Roger Williams, for the Government. Witnesses for the Govt. Joseph Broderick recalled. Transcript to be filed. Court will set up a briefing schedule.		
Apr. 25	Filed subpoena--Mr. Joseph Broderick, return "no service" 4/23/75		
May 19	Hearing. Adj to 6/17 at 10:00 a.m.		
June 27	Filed Cy. 5 of CJA-21 - Authorization for Transcript re - Elgin C. Cook; Cy. 4 to the Adm. Office.		

DATE 1975	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
Nov. 25	Filed Pet. & Ord. for W. of H.C.A.D. Proseq., Mary Jean Askew, for trial; ret. 12/3/1975		
Nov. 24	Pre trial conference held.		
Dec. 3	Filed one subpoena to testify for Jimmie Dickson served on 11-28-75. Filed four subpoenas to testify for Robert Mack, Edward Bartnicki, Richard Mazur, and Irene Witczak served on 12-1-75. Filed one subpoena D/T for Janice Kilborn served on 12-2-75.		
Dec. 4	Filed four subpoenas to testify for Otis Pender, Hyman Fish, Willie Harlan, and James Ware, served on 12-1-75. Filed three subpoenas to testify for William Middleton, Frederick Walentynowicz, and Marcus Klein, served on 12-2-75. Filed one subpoena to testify for Samuel Cioffi, served on 12-3-75.		
Dec. 5	Filed two subpoenas to testify for Richard Jenson, and Telfor Munfo returned no service. Filed three subpoenas to testify for Eugene Skrzypek, Keith Royster, and Lloyd Thomas served on 12-2-75. Filed three subpoenas D/T for Mary Esther Kelly, Gregory A. Saxum, and Bethlehem Steel Company served on 12-2-75.		
Dec. 9	Filed trial memorandum		
Dec 5	On motion of the Government, deft. Elgin Cook's bail is revoked and the court orders issuance of a bench warrant for the arrest of deft. Issued warrant of arrest for Elgin Cook and bail is revoked		
Dec. 8	Application by Deft. Elgin C. Cook for reinstatement of bail. Application granted. Deft. to be released upon execution of a bail bond identical with the original bond.		
Dec. 8	Filed \$5,000 personal recog. bond for Elgin Cook, upon reinstatement of bail		
Dec. 10	Filed Warrant for arrest of deft. Elgin C. Cook, ret. executed 12/5/75		
Dec. 10	Filed 9 subpoenas - Joseph Ruocco, James A. Hatten, William Julius, served 12/3/75; Henry Lewis, served 12/5/75; Marguerite Johnson, served 12/8/75; Frederick C. Deuschle, Sam Simon, served 12/8/75; Capt. Floyd Edwards - served 12/9/75; Alvin Salter, served 12/8/75; One subpoena (D.T.) - Less-Lee, Inc., served 12/8/75		
Dec. 9	Govt. moves case ready for trial, before Judge Curtin at Buffalo, N.Y. whereupon, jury is empanelled. Trial is hereby adjourned to a time to be fixed by the court. On motion of the deft. and stipulated to by the Govt. deft. Concetta Raspberry is severed from this trial.		
Dec. 16	Filed three subpoenas for Joseph Broderick, Abe Johnson, John Birt, returned no service.		

(OVER)

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
1975			
Dec. 15	Deft. George Raspberry, present with counsel, changes his plea from not guilty to guilty to counts 35 and 36 of the indictment. Sentence is deferred until after the completion of the trial of the other defts.		
Dec. 17	Trial continues from 12/9/75 with the same appearances and jury with the exception of juror No. 2, Darcy R. Souder, who is absent because of a death in his family. -- He is replaced by alternate No. 1 - Albert Degennars. Trial is adj. until tomorrow--		
Dec. 17	Deft. Rosa Bell McClendon present with counsel, changes her plea from not guilty to guilty to counts 30, 31 and 35 of the indictment. Sentence is deferred until after the completion of the trial of the remaining defts.		
Dec. 19	Filed subpoena - Mamie Calhoun, served 12/17/75		
Dec. 22	Filed two subpoenas D/T Erie County Water Authority, City of Buffalo, served 12-19-75.		
Dec. 22	Filed subpoena and subpoena ticket for Teresa J. Reberam served on 12-16-75		
Dec. 18	Trial continues from yesterday. Adj. until 12-19-75		
Dec. 19	Trial continues from yesterday. Adj. until 12-22-75		
Dec. 22	Trial continues from 12-19-75. Adj. until 12-23-75		
Dec. 23	Trial continues from yesterday. Adj. until 12-29-75		
Dec. 29	Trial continues from 12-23-75 with the same appearances.		
Dec. 31	Filed two subpoenas for Nicholas Kapsuris, and Paul Meindl, returned no s Filed one subpoenas for Administrator Deaconess Hospital served 12-30-75.		
Dec. 30	Trial continues from yesterday with the same appearances. Trial is Adj. until 1-5-76		
1976			
Jan. 3	Filed CJA 21 copies 2 and 5 for court steno in the amount of \$49.00 original to adm. office for payment. Curtin J.		
Jan. 5	Trial continues from December 30, 1975 with the same appearances & jury-- Deft. Kate Lee Cook moves for dismissal of the indictment. Motion granted. Indictment against this defendant is dismissed. THINK XXXXXXXXXXXXXXXXXXXX Deft. Elgin C. Cook moves for dismissal of the indictment. Denied; Deft. Mary Jean Askew moves for dismissal - denied; Deft. Nathaniel Askew moves for dismissal - denied; Deft. Robert Askew moves for dismissal - denied; Deft. Louis Toliver moves for dismissal - motion denied; Trial is adj. until tomorrow		
Jan. 6	Trial continues from yesterday with the same appearance & jury - Court rules on requests to charge; Court is adj. until tomorrow - 1/7/76		
Jan. 7	Trial continues from yesterday with the same appearances - Court dismisses counts 21, 24, 28, 47, 49, 54, 58, 62, 66, 69, of the indictment. The jury retires to deliberate upon their verdict;		
Jan. 8	Jury returns to resume their deliberations. Jury returns with the following verdict: Deft. Elgin Cook - GUILTY ON CTS. 1, 2, 4, 6, 7, 8, 9, 12, 13, 14, 15, 18, 19, 20, 23, 36, 37, 41, 51, 52, 53, 64, 65, 68, 71; MARY JEAN ASKEW - GUILTY ON CTS. - 1, 2, 3, 10, 13, 14, 22, 25, 58, 59.; ROBERT ALLEN ASKEW -		

DATE 1976	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
Jan. 8	GUILTY ON COUNTS - 1, 2, 5; LOUIS TOLIVER - GUILTY CTS. 13, 14, 29, 36, 37, 48, 50, 51, 55, 57, 58, 59, 63, 64, 65, 67, 68, 70; NATHANIEL ASKEW - NOT GUILTY; DEFT. ELGIN COOK - NOT GUILTY - CT. 52; DEFT. LOUIS TOLIVER - NOT GUILTY CT. 52; Sentence - Feb. 23, 1976.		
Jan. 8	Filed Jury Verdict		
Jan 13	J.S. 3 made for deft. Kate Lee Cook, and Nathaniel Askew.		
Jan 19	Filed Judgment of acquittal for deft. Nathaniel Askew.		
Jan 19	Filed order dismissing indictment against Kate Lee Cook. Curtin, J.		
Feb 5	Filed Order dismissing the Indictment against Cainetta Raspberry-- CURTIN, J.		
Feb 20	Filed Pet. & Order for Writ of H.C. Ad Proseq.--Curtin, J : Sentence of Mary Jean Askew		
Feb. 23	On motion of the Govt. Elgin Cook is sentenced as follows: Deft. remanded to the custody of the Attorney General for a period of 4 years on counts 1,2,4,6,9,12,15,18,20,23,36,37, 41, 51, 53, 64, 65, 68, 71 of the indictment. Sentences are to run concurrently. CURTIN, J. Robert Askew		
Feb. 23	For sentence: Deft./sentenced under Title 18 Sec. 4209. Imposition of sentence suspended and deft placed on probation for 2 years on counts 1, 2, and 5 of the indictment, to run concurrently. CURTIN, J.		
Feb. 23	Deft. Toliver is sentenced as follows: Deft. is remanded to the custody of the Atty. General for a period of Five (5) Years on Counts 13, 14, 29, 36, 37, 48, 50, 51, 55, 57, 58, 59, 63, 64, 65, 68, 70; The sentence on Counts 58, 59, 63, 64, 65, 68, 70 shall be concurrent on those particular counts, but consecutive to the sentence on Counts 13, 14, 29, 36, 37, 48, 50, 51, 55, 57. In other-words you will be sentence for a period of Five (5) Years. It will be a consecutive term as far as the remainder of Counts that I have indicated is concerned. As to the Consecutive Period, Execution of the Sentence is suspended, and the defendant is placed on probation for a period of Four (4) Years--CURTIN, J.		
Feb 23	Filed Deft Elgin Cook's notice of appeal		
" 24	Filed Deft. Elgin Cook's motion for bail pending appeal		
" 26	The Court on motion of the Government, sentences the deft. Elgin Cook on the counts inadvertently omitted in the 2/23/76 sentence, as follows: Deft. Elgin Cook is remanded to the custody of the Atty. General for a period of Four (4) Years on Cts. 7, 8, 13, 14 and 19 of the Indictment. This sentence is to run concurrently with the other counts on which deft. has already been sentenced-- Curtin, J.		
Feb. 26	Filed Judgment and Probation for Deft. Robert Allen Askew		
Feb. 27	Application for bail for Deft. Elgin C. Cook. Court rules that deft.		

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
Feb 27	may proceed as an indigent person on appeal. Court sets bail at \$5,000, cash or bond.		
Mar 1	Filed Judgment and Commitment Order for Deft. Elgin Cook to the Marshal		Commitment issued
Mar 1	Filed Suppl. Judgment & Commitment Order for Deft. Elgin Cook, including Cts., 7,8,13,14 and 19, inadvertently omitted from the 2/23/76 sentence Commitment issued to the Marshal.		
Mar 1	Filed \$5,000 appeal bond for Deft. Elgin Cook - Stuyvesant Insurance Company, surety		
Mar 1	Application by deft/ for bail. Deft. released on bail.		
Mar 1	Deft. Mary Jean Askew is sentenced as follows: Deft. is remanded to the custody of the Atty. General for a period of Three (3) Years on Cts. 1,2,3,10,13,14,22,25,58, and 59 of the Indictment. This sentence is on each count of the Indictment and are to run concurrently. Sentence to run concurrently with sentence now being served. -CURTIN, J.		
Mar 1	Deft. Louis Toliver is sentenced on Count 67 of the Indictment as follows: The sentence is the same as the other counts of the Indictment. Deft. remanded to the custody of the Atty. General for a period of five (5) Years, to run concurrently with the other counts. -CURTIN, J.		
Mar 1	Filed \$10,000 appeal bond for deft. Louis Toliver (Archie Toliver, and Ernestine Toliver, sureties)		
Mar 1	Filed Deft Mary Jean Askew's notice of appeal		
Mar 2	Filed Deft Toliver's notice of appeal		
Mar 4	Filed Judgment and Order of Commitment - for Louis Toliver. Commitment issued		
Mar 4	Filed Judgment and Order of Commitment(Supplemental - Ct. 67) for Deft. Toliver. Commitment issued		
Mar 4	Filed Judgment and Order of Commitment for Deft. Mary Jean Askew. Commitment issued.		
Mar 5	Cy of notice of appeal for deft. Elgin Cook, with form A, and financial affidavit, mailed to U.S. Atty., Deft., and CCA with statement of docket entries		
Mar 5	Cy of notice of appeal for deft Louis Toliver, with form A and financial affidavit mailed to U.S. Atty., Deft., and the CCA with statement of docket entries		
Mar 5	Cy of notice of appeal for deft Mary Jean Askew, with form A and financial affidavit, mailed to the U.S. Atty., Deft. and the CCA with statement of docket entries		
Mar 5	Filed Writ of H.C. Ad Preseq, Mary Jean Askew, executed- 2/28/76		
Mar 9	Filed Cy 5 of CJA-21 - Authorization for transcript - Elgin Cook; cy to the Adm. office		
Mar 9	Filed Cy 5 of CJA-21 - authorization for transcript - Mary Jean Askew; cy to the Adm. office		
Mar 11	Deft Toliver appears in court and makes application to leave Erie County to travel to San Antonio, Texas. Permission granted to attend funeral of his cousin's wife.		

ITEM # 2

Arrested 11/11/72
N.G.

In the District Court of the United States

For the Western District of New York

SUPERSEDING
INDICTMENT

THE UNITED STATES OF AMERICA

MARCH 1974 SESSION

*dismissed at
close of Court case.*
ELGIN C. COOK, ~~KATE LEE COOK~~, *plea*
MARY JEAN ASKEW, ROSA BELL MCLENDON,
GEORGE C. RASPBERRY, ~~CAINETTA RASPBERRY~~,
plea NATHANIEL ASKEW, ROBERT ALLEN ASKEW and
LOUIS TOLIVER

No. 74 244

Viol. Title 18,
United States Code,
Sections 371, 1341, 13
and 2

The Grand Jury Charges:

That beginning in or about December, 1969 and continuing through the 15th day of December, 1972, in the Western District of New York, the defendants, ELGIN C. COOK, MARY JEAN ASKEW, ROSA BELL MCLENDON, ROBERT ALLEN ASKEW and NATHANIEL ASKEW, did, willfully, knowingly and unlawfully combine, conspire and agree together, and with other persons to the grand jury unknown, to commit offenses against the United States; to wit, to violate Sections 1341 and 1342 of Title 18, United States Code, by knowingly and with intent to defraud, devise a scheme and artifice to obtain moneys from the New York State Unemployment Insurance Fund by placing in an authorized depository for mail matter, certain claim for benefits forms, verification of employment forms and certification forms to be sent or delivered by the Post Office Department of the United States and/or the United States Postal Service, and by causing to be delivered by mail according to direction thereon, New York State Unemployment Insurance Benefits checks and certification forms and in furthering such scheme or device by means of the Post Office Department of the United States and/or the

United States Postal Service, using false and fictitious names and addresses; all in violation of Title 18, United States Code, Section 371.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the defendants committed the following overt acts:

(1) That on or about January 26, 1971, the defendant, MARY JEAN ASKEW, using the false and fictitious name of Katheryn Lee Willis made claim upon the New York State Department of Labor, Division of Employment, for unemployment insurance benefits, indicating employment with the Cook and Green Car Wash between January 26, 1970 and January 24, 1971.

(2) That on or about January 30, 1970, the defendant, ELGIN C. COOK, mailed Form 1012.11 to the New York State Department of Labor verifying that a Katheryn Lee Willis was employed by him.

(3) That between February 14, 1971 and April 30, 1972, the defendant, MARY JEAN ASKEW, mailed to the New York State Unemployment Insurance Fund, using the name Katheryn L. Willis, a certification that she was still unemployed and entitled to insurance benefits.

(4) That based upon those certifications, the State of New York mailed to the defendant, MARY JEAN ASKEW, using the assumed name of K. L. Willis, unemployment insurance fund checks which checks were endorsed by and cashed by the defendant, MARY JEAN ASKEW.

*Indis-
not by
mail*

60-10-1

(5) That on or about March 3, 1971, the defendant, ELGIN C. COOK, verified, in a Request for Employment and Wage Data, mailed to the New York State Unemployment Insurance Fund, that the defendant, ROBERT ALLEN ASKEW, was employed by him.

(6) That between February 14, 1972 and May 1, 1972, the defendant, ROBERT ALLEN ASKEW, mailed to the New York State Unemployment Insurance Fund a statement certifying that he was still unemployed.

(7) That between February 24, 1972 and May 5, 1972, the defendant, ROBERT ALLEN ASKEW, received via the mails, various checks from the State of New York, Albany, New York.

(8) That on or about March 2, 1971, the defendant, ELGIN C. COOK, mailed to the New York State Department of Labor, Form LO12.11 verifying that one Mary Betts was employed by him from February 23, 1970 to February 21, 1971.

(9) That between March 18, 1971 and May 19, 1971, checks were issued by the State of New York to Mary Betts at 83 Brunswick Blvd., Buffalo, New York.

(10) That on or about February 4, 1971, the defendant, ELGIN C. COOK, filed a claim with the New York State Department of Labor for unemployment insurance benefits under the fictitious name of Raymond Briggs.

(11) That in or about February, 1971, the defendant, ELGIN C. COOK, mailed Form LO12.11 to the New York State Department of Labor verifying that Raymond Briggs was employed by him.

(12) That on or about February 11, 1971, the defendant MARY JEAN ASKEW, filed a claim with the New York Department of Labor, Form LO330, under the fictitious name of Lucy M. Coleman.

wherein she alleged that she was employed by the Cook and Green Car Wash from February 9, 1970 to February 7, 1971.

(13) That on or about February 14, 1971, the defendant, ELGIN C. COOK, mailed Form LO12.11 to the New York State Department of Labor verifying that one Lucy M. Coleman worked for him.

(14) That on or about February 14, 1971, the defendant, MARY JEAN ASKEW, filed a claim for New York State Unemployment Insurance benefits with the New York State Department of Labor using the false and fictitious name of Willie S. Middleton.

(15) That on or about February 20, 1970, the defendant, ELGIN C. COOK, mailed Form LO12.11 to the New York State Department of Labor verifying that one Willie S. Middleton was employed by him.

*not mailed
note in
1972*

(16) That between April 13, 1971 and April 25, 1972, the defendant, MARY JEAN ASKEW, mailed Form LO4-05.1 to the New York State Department of Labor verifying that she was unemployed.

*note in
1972*

(17) That between April 16, 1971 and May 1, 1972, the defendant, MARY JEAN ASKEW, received via the mails from the New York State Unemployment Insurance Fund, Albany, New York, unemployment insurance checks in the name of Willie S. Middleton, which checks were endorsed and cashed by her.

(18) That on or about February 9, 1971, a claim for unemployment insurance benefits was received by the New York State Department of Labor wherein one Keith Royster claimed to be eligible for unemployment insurance benefits as a result of having worked for the Cook and Green Car Wash.

(19) That subsequent thereto and on and between October 22, 1971 and April 29, 1972, checks issued by the State of New York Unemployment Insurance Fund, Albany, New York, were mailed to Keith Royster, 271 Southampton Street, Buffalo, New York, which checks were endorsed and cashed by the defendant, ROSA BELL McCLENDON.

(20) That on or about November 2, 1971, the defendant, ELGIN C. COOK, mailed Form L012.11 to the New York State Department of Labor verifying that the defendant, NATHANIEL ASKEW, worked for him between August 17, 1970 and August 15, 1971.

(21) That between October 20, 1971 and May 31, 1972, checks drawn on the New York State Unemployment Insurance Fund were mailed to the defendant NATHANIEL ASKEW, at 83 Brunswick Blvd., Buffalo, New York.

COURT II

The Grand Jury Further Charges:

That beginning in or about December, 1969 and continuing to December 15, 1972, in the Western District of New York, the defendants, ELGIN C. COOK, MARY JEAN ASKEW, ROSA BELL McCLENDON, ROBERT ALLEN ASKEW, and NATHANIEL ASKEW, devised and intended to devise a scheme and artifice to defraud the New York State Unemployment Insurance Fund of unemployment insurance benefits by filing false and fraudulent claims for such benefits using false or fictitious names and bonafide names claiming to have worked for the Cook and Green Car Wash, thereby, obtaining moneys from the New York State Unemployment Insurance Fund. That the scheme and artifice to defraud, so devised and intended to be devised by the defendants, ELGIN C. COOK, MARY JEAN ASKEW, ROSA BELL McCLENDON, ROBERT ALLEN ASKEW, and NATHANIEL ASKEW, was in substance as follows:

(a) It was a part of the scheme and artifice that the defendants, ELGIN C. COOK, MARY JEAN ASKEW, ROSA BELL McCLENDON, ROBERT ALLEN ASKEW, and NATHANIEL ASKEW, would claim to have worked for the Cook and Green Car Wash.

(b) It was a further part of the scheme and artifice that the defendant, ELGIN C. COOK, would verify, by mailing to the New York State Department of Labor, Form LO 12.11, verifying that the said defendants using various false and fictitious names worked for him.

(c) It was a further part of the scheme and artifice for the defendant, ELGIN C. COOK, to place and cause to be placed in an authorized document for said matter, such unemployment verification form.

(d) It was a further part of the scheme and device for the defendants, ELGIN C. COOK, MARY JEAN ASKEW, ROSA

BELL McCLENDON, ROBERT ALLEN ASKEW and NATHANIEL ASKEW, to place and cause to be placed in an authorized depository for mail matter, Form LO406 directed to the New York State Department of Labor verifying entitlement to New York State Unemployment Insurance benefits.

(e) It was a further part of the scheme and artifice that the defendants would cause to be placed in an authorized depository for mail matter, checks drawn on the New York State Unemployment Insurance Fund mailed to them under real

~~or fictitious names~~

That for the purpose of executing the aforesaid scheme and artifice, and on or about January 30, 1970, the defendant, ELGIN C. COOK, mailed Form LO12.11 to the New York State Department of Labor verifying that a Katheryn Lee Willis was employed by him; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT III

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count II, above, and between February 14, 1971 and April 30, 1972, in the Western District of New York, the defendant, MARY JEAN ASKEW, mailed to the New York State Unemployment Insurance Fund, using the name Katheryn L. Willis, a certification that she was still unemployed and entitled to insurance benefits and that based upon those certifications, the State of New York mailed to the defendant, MARY JEAN ASKEW, using the assumed name of K. L. Willis, unemployment insurance benefits; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT IV

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count II, above, and on or about March 3, 1971, in the Western District of New York, the defendant, ELGIN C. COOK, verified, in a Request for Employment and Wage Data, mailed to the New York State Unemployment Insurance Fund, that the defendant, ROBERT ALLEN ASKEW, was employed by him; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT V

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count II, above, and between February 14, 1972 and May 1, 1972, in the Western District of New York, the defendant, ROBERT ALLEN ASKEW, mailed to the New York State Unemployment Insurance Fund a statement certifying that he was still unemployed and that between February 24, 1972 and May 5, 1972, the defendant, ROBERT ALLEN ASKEW, received via the mails, various checks from the State of New York, Albany, New York; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT VI

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count II, above, and on or about

defendant, ELGIN C. COOK, mailed to the New York State Department of Labor, Form L012.11 verifying that one Mary Betts was employed by him from February 23, 1970 to February 21, 1971; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT VII

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count II, above, and in or about February, 1971, in the Western District of New York, the defendant, ELGIN C. COOK, mailed Form L012.11 to the New York State Department of Labor verifying that Raymond Briggs was employed by him; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT VIII

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count II, above, and on or about February 14, 1971, in the Western District of New York, the defendant, ELGIN C. COOK, mailed Form L012.11 to the New York State Department of Labor verifying that one Lucy M. Coleman worked for him; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT IX

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count II, above, and on or about

February 20, 1970, in the Western District of New York, the defendant, ELGIN C. COOK, mailed Form LO12.11 to the New York State Department of Labor verifying that one Willie S. Middleton was employed by him; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT X

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count II, above, and between April 13, 1971 and April 25, 1972, in the Western District of New York, the defendant, MARY JEAN ASKEW, mailed Form LO406.1 to the New York State Department of Labor verifying that she was unemployed and between April 16, 1971 and May 1, 1972, the defendant, MARY JEAN ASKEW, received via the mails from the New York State Unemployment Insurance Fund, Albany, New York, unemployment insurance checks in the name of Willie S. Middleton, which checks were endorsed and cashed by her; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XI

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count II, above, and on or about February 9, 1971, in the Western District of New York, a claim for unemployment insurance benefits was received by the New York State Department of Labor wherein one Keith Royster claimed to be eligible for unemployment insurance benefits and that subsequent thereto and on and

between October 22, 1971 and April 29, 1972, checks issued by the State of New York Unemployment Insurance Fund, Albany, New York, were mailed to Keith Royster 271 Southampton Street, Buffalo, New York, which checks were endorsed and cashed by the defendant, ROSA BELL McLENDON; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XII

The Grand Jury, Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count II, above, and on or about November 2, 1971; in the Western District of New York, the defendant, ELOIN C. COOK, mailed Form LO12.11 to the New York State Department of Labor verifying that the defendant, NATHANIEL ASKEW, worked for him between August 17, 1970 and August 15, 1971 and that between October 20, 1971 and May 31, 1972, checks drawn on the New York State Unemployment Insurance Fund were mailed to the defendant, NATHANIEL ASKEW, at 83 Brunswick Blvd., Buffalo, New York; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XIIIThe Grand Jury Further Charges:

That beginning in or about October, 1971 and continuing through the 1st day of August, 1972, in the Western District of New York, the defendants, ELGIN C. COOK, MARY JEAN ASKEW, ROSA BELL McLENDON, LOUIS TOLIVER and KAIRETTA RASPBERRY, did, willfully, knowingly and unlawfully combine, conspire and agree together, and with other persons to the grand jury unknown, to commit offenses against the United States; to wit, to violate Sections 13-1 and 13-2 of Title 18, United States Code, by knowingly and with intent to defraud, devise a scheme and artifice to obtain moneys from the New York State Unemployment Insurance Fund by placing in an authorized depository for mail matter, certain claim for benefits forms, verification of employment forms and certification forms to be sent or delivered by the Post Office Department of the United States and/or the United States Postal Service, and by causing to be delivered by mail according to direction thereon, New York State Unemployment Insurance benefits checks and certification form and in furthering such scheme or device by means of the Post Office Department of the United States and/or the United States Postal Service, using false and fictitious names and addresses; all in violation of Title 18, United States Code, Section 371.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the defendants committed the following

- (1) That on or about November 10, 1971, the defendant, ELGIN C. COOK, mailed or caused to be mailed

to the New York State Unemployment Department Form LO 12.11 verifying that one Jean Carter was employed by him as the owner of Cook's Auto Care from November 2, 1970 until October 31, 1971.

(2) That on or about December 2, 1971, the defendant, ELGIN C. COOK, using the fictitious name of Lynn P. Carter filed with the New York State Department of Labor a claim for unemployment insurance benefits, claiming to have worked for Cook's Auto Care from November 30, 1970 to November 28, 1971.

(3) That on or about January 20, 1972, the defendant, ROSA BELL McLENDON, filed a claim with the New York State Department of Labor using the false and fictitious name of Johnnie L. Jones, claiming to have worked for Cook's Auto Care from January 16, 1971 to January 16, 1972.

(4) That on or about January 26, 1972, the defendant, ELGIN C. COOK, mailed or caused to be mailed to the New York State Department of Labor Form LO 12.11 verifying that one Johnnie L. Jones was employed by him from January 16, 1971 to January 16, 1972.

(5) That on or between February 8, 1972 and May 23, 1972, the defendant, ROSA BELL McLENDON, mailed or caused to be mailed to the New York State Department of Labor Form LO 406.1 certifying, in the name of Johnnie L. Jones, that she was unemployed and entitled to unemployment insurance benefits.

(6) That on or between February 14, 1972 and May 23, 1972, the defendant, ELGIN C. COOK, mailed or caused to be mailed the mails numerous checks from the State of New York, in

the name of J. L. Jones, directed to her at 387 Woodlawn Avenue, Buffalo, New York, which she endorsed and cashed.

(7) That on or about December 20, 1971, the defendant, LOUIS TOLIVER, filed a claim with the New York State Department of Labor wherein he claimed to have worked for Cook's Auto Care from April 17, 1971 to December 17, 1971 using the false and fictitious name of Terry Cole.

(8) That on or about December 29, 1971, the defendant ELGIN C. COOK, mailed or caused to be mailed to the State of New York, Department of Labor, Form LO 12.11 verifying that one Terry Cole was employed by him from December 21, 1970 to December 19, 1971.

(9) That on or between March 15, 1972 and May 15, 1972, the defendant, LOUIS TOLIVER, mailed or caused to be mailed to the New York State Department of Labor Form LO 406.1, certifying under the false and fictitious name of Terry Cole, that he was and continued to be unemployed.

(10) That on or between April 4, 1972 and May 23, 1972, the defendant, LOUIS TOLIVER, received via the mails from the New York State Unemployment Insurance Fund, various checks directed to T. Cole, 307 Johnson Street, Buffalo, New York, which he endorsed and cashed.

(11) That on or about January 26, 1972, the defendant, ELGIN C. COOK, mailed or caused to be mailed to the New York State Department of Labor Form LO 12.11 verifying that one Patricia Ann Green was employed by him from January 18, 1971 to January 16, 1972.

(12) That on or about November 16, 1971, the defendant MARY JEAN ASKEW, filed a claim with the New York State Department of Labor wherein she claimed to have worked for

Cook's Auto Care from November 16, 1970 to November 14, 1971 using the false and fictitious name of Terry Mitchell.

(13) That on or about December 6, 1971, the defendant, ELGIN C. COOK, mailed or caused to be mailed to the New York State Department of Labor, Form LO 12.11 verifying that one Terry Mitchell was employed by him from November 16, 1970 to November 14, 1971.

not mailed
(14) Between January 13, 1972 and April 27, 1972, the defendant, MARY JEAN ASKEW, mailed or caused to be mailed to the New York State Department of Labor Form LO 406.1, certifying under the false and fictitious name of Terry Mitchell, that she was and continued to be unemployed.

(15) On and between December 16, 1971 and May 3, 1972, the defendant, MARY JEAN ASKEW, received via the mail from the State of New York, Unemployment Insurance Fund, various checks directed to T. Mitchell, 83 Brunswick Boulevard, Buffalo, New York, which she received and cashed.

(16) On or about October 29, 1971, the defendant, MARY JEAN ASKEW, filed a claim for unemployment insurance benefits with the New York State Department of Labor using the false and fictitious name of Jerry Smith, claiming to have worked for Cook's Auto Care from October 26, 1970 to October 24, 1971.

(17) On or about November 10, 1971, the defendant, ELGIN C. COOK, mailed or caused to be mailed to the New York State Department of Labor Form LO 12.11 verifying that one to October 24, 1971.

not mailed
(18) On and between January 12, 1972 and June 28, 1972, the defendant, MARY JEAN ASKEW, mailed or caused to be mailed to the State of New York, Department of Labor, Form LO 406.1

wherein she verified under the false and fictitious name of Jerry L. Smith that she was and continued to be unemployed.

(19) On and between January 17, 1972 and July 5, 1972, the defendant, MARY JEAN ASHEW, received via the mail, various checks drawn on the State of New York, Unemployment Insurance Fund, directed to J. L. Smith, 83 Brunswick Boulevard, Buffalo, New York which she endorsed and cashed.

(20) On or about November 4, 1971, the defendant, ELGIN C. COOK, using the false and fictitious name of Mary J. Smith, made a claim for benefits for unemployment insurance benefits upon the State of New York, Department of Labor, claiming to have worked for Cook's Auto Care from November 2, 1970 to October 31, 1971.

(21) On or about November 10, 1971, the defendant, ELGIN C. COOK, mailed or caused to be mailed to the New York State Department of Labor, Form LO 12.11 verifying that one Mary J. Smith was employed by him from November 2, 1970 to October 31, 1971.

(22) On or about October 26, 1971, the defendant, ELGIN C. COOK, filed with the State of New York, a claim for unemployment insurance benefits using the false and fictitious name of Cainetta Raspoerry, claiming to have worked for Cook's Auto Care from October 26, 1970 to October 24, 1971.

(23) On or about November 10, 1971, the defendant, ELGIN C. COOK, caused to be mailed to the New York State Department of Labor, Form LO 12.11 verifying that Cainetta Raspoerry was employed by him from October 26, 1970 to October 24, 1971.

(24) On and between November 2, 1970 and October 26, 1971, the defendant, KAINETTA RASPBERRY, certified, by mailing to the New York State Department of Labor Form LO 406 verifying that she remained unemployed and entitled to unemployment insurance benefits.

(25) On and between November 2, 1970 and October 26, 1971, the defendant, KAINETTA RASPBERRY, received via the mails from the New York State Unemployment Insurance Fund numerous checks in her own name and in the name of Mary J. Smith which she endorsed and cashed.

COUNT XIV

The Grand Jury further charges:

That beginning in or about October, 1971 and continuing through the 1st day of August, 1972, in the Western District of New York, the defendants, ELGIN C. COOK, MARY JEAN ASKEW, ROSA BELL McCLENDON, LOUIS TOLIVER and CAINETTA RASPBERRY, devised and intended to devise a scheme and artifice to defraud the New York State Unemployment Insurance Fund of unemployment insurance benefits for filing false and fraudulent claims for such benefits using false and fictitious names and bona fide names, claiming to have worked for Cook Auto Care, thereby obtaining moneys from the New York State Unemployment Insurance Fund. That the scheme and artifice to defraud so devised and intended to be devised by the defendants, ELGIN C. COOK, MARY JEAN ASKEW, ROSA BELL McCLENDON, LOUIS TOLIVER and CAINETTA RASPBERRY, was in substance as follows:

(a) It was a part of a scheme and artifice that the defendants, ELGIN C. COOK, MARY JEAN ASKEW, ROSE BELL McCLENDON, LOUIS TOLIVER and CAINETTA RASPBERRY, did claim to have worked for Cook Auto Care.

(b) It was a further part of the scheme and artifice that the defendant, ELGIN C. COOK, did verify, by mailing to the New York State Department of Labor, Form LO 12.11, verifying that said defendants, using various false and fictitious names, worked for Cook Auto Care.

(c) It was a further part of the scheme and device for the defendants, ELGIN C. COOK, MARY JEAN ASKEW, ROSA BELL McCLENDON, LOUIS TOLIVER and CAINETTA RASPBERRY, to place and cause to be placed in an authorized depository

for mail matter Form LO 406.1, directed to the New York State Department of Labor verifying their continued unemployment and entitlement to New York State unemployment insurance benefits.

(d) It was a further part of the scheme and artifice that the defendants, ELGIN C. COOK, MARY JEAN ASKEW and ROSA BELL McCLENDON, did cause to be placed in an authorized depository for mail matter, checks drawn on the New York State Unemployment Insurance Fund mailed to them under real or fictitious names.

That for the purpose of executing the aforesaid scheme and artifice, and on or about November 10, 1971, the defendant, ELGIN C. COOK, mailed or caused to be mailed to the New York State Unemployment Insurance Department, Form LO 12.11, verifying that one Jean Carter was employed by him as the owner of Cook's Auto Care from November 2, 1970 until October 31, 1971; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XV

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XIV above, and on or about January 26, 1972, in the Western District of New York, the defendant, ELGIN C. COOK, mailed or caused to be mailed to the New York State Department of Labor, Form LO 12.11, verifying that one Johnnie L. Jones was employed by him from January 16, 1971 to January 16, 1972; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XVI

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XIV above, and that on or between February 8, 1972 and May 23, 1972, in the Western District of New York, the defendant, ROSA BELL McCLENDON, mailed or caused to be mailed to the New York State Department of Labor Form LO 406.1 certifying, in the name of Johnnie L. Jones, that she was unemployed and entitled to unemployment insurance benefits; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XVII

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XIV above, and on or between February 14, 1972 and May 29, 1972, in the Western District of New York, the defendant, ROSA BELL McCLENDON, received via the mails numerous checks from the State of New York, in the name of J. L. Jones, directed to her at 187 Woodlawn Avenue, Buffalo, New York, which she endorsed and cashed; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XVIII

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XIV above, and that on or about December 29, 1971, in the Western District of New York, the defendant, ELGIN C. COOK, mailed or caused to be mailed to the State of New York, Department of

Labor, Form LO 12.11 verifying that one Terry Cole was employed by him from December 1, 1970 to December 19, 1971; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XIX

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XIV above, and that on or about January 26, 1972, in the Western District of New York, the defendant, ELGIN C. COOK, mailed or caused to be mailed to the New York State Department of Labor Form LO 12.11 verifying that one Patricia Ann Green was employed by him from January 18, 1971 to January 16, 1972; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XX

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XIV above, and that on or about December 6, 1971, in the Western District of New York, the defendant, ELGIN C. COOK, mailed or caused to be mailed to the New York State Department of Labor, Form LO 12.11 verifying that one Terry Mitchell was employed by him from November 16, 1970 to November 14, 1971; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XXI

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XIV above, and that between January 13, 1972 and April 27, 1972, in the Western District of New York, the defendant, MARY JEAN ASKEW, mailed or caused to be mailed to the New York State Department of Labor Form LO 406.1, certifying under the false and fictitious name of Jerry Mitchell, that she was and continued to be unemployed; all in violation of Title 18, United States Code, Sections 1341 and 2.

*not mailed
Dismissed*

COUNT XXII

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XIV above, and on and between December 16, 1971 and May 3, 1972, in the Western District of New York, the defendant, MARY JEAN ASKEW, received via the mail from the State of New York, Unemployment Insurance Fund, various checks directed to T. Mitchell, 83 Brunswick Boulevard, Buffalo, New York, which she endorsed and cashed; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XXIII

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XIV above, and that on or about November 10, 1971, in the Western District of New York, the defendant, ELGIN C. COOK, mailed or caused to be mailed to the New York State Department of Labor Form LO 12.11 verifying that one Jerry L. Smith was employed by him from October 26, 1970 to October 24, 1971; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XXIV

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XIV above, and that on and between January 12, 1972 and June 28, 1972, in the Western District of New York, the defendant, MARY JEAN ASKEW, mailed or caused to be mailed to the State of New York, Department of Labor, Form LO 406.1 wherein she verified under the false and fictitious name of Jerry L. Smith that she was and continued to be unemployed; all in violation of Title 18, United States Code, Sections 1341 and 2.

not
mailed
DISM

COUNT XXV

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XIV above, and on and between January 17, 1972 and July 5, 1972, in the Western District of New York, the defendant, MARY JEAN ASKEW, received via the mail, various checks drawn on the State of New York, Unemployment Insurance Fund, directed to J. L. Smith, 83 Brunswick Boulevard, Buffalo, New York which she endorsed and cashed; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XXVI

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XIV above, and on and between November 2, 1970 and October 26, 1971, in the Western District of New York, the defendant, CAINETTA RASPBERRY, mailed or caused to be mailed to the State of New York, Department of Labor, Form LO 406.1, wherein she verified

that she was and continued to be unemployed and entitled to unemployment insurance benefits; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XXVII

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XIV above, and on and between November 2, 1970 and October 26, 1971, in the Western District of New York, the defendant, CAINETTA RASPBERRY, received via the mails, various checks drawn on the State of New York Unemployment Insurance Fund, directed to her in her own name and in the name of Mary J. Smith which she endorsed and cashed; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XXVIII

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XIV above, and on and between March 15, 1972 and May 15, 1972, in the Western District of New York, the defendant, LOUIS TOLIVER, mailed or caused to be mailed to the State of New York, Department of Labor, Form LO 406.1 wherein he verified under the false and fictitious name of Terry Cole that he was and continued to be unemployed and entitled to unemployment insurance funds; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XXIX

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XIV above, and on and between April 4, 1972 and May 23, 1972, in the Western District of New York, the defendant, LOUIS TOLIVER, received via the mails, various checks drawn on the State of New York, Unemployment Insurance Fund, directed to T. Cole, 307 Johnson Street, Buffalo, New York, which he endorsed and cashed; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XXX

The Grand Jury further charges:

That Beginning in or about August, 1972 and continuing through December 1, 1972, in the Western District of New York, the defendants GEORGE C. RASPBERRY and ROSA BELL McCLENDON, did, willfully, knowingly and unlawfully combine, conspire and agree together, and with other persons to the Grand Jury unknown, to commit offenses against the United States; to wit, to violate Sections 1341 and 1342 of Title 18, United States Code, by knowingly and with intent to defraud, devise a scheme and artifice to obtain moneys from the New York State Unemployment Insurance Fund by filing false and fraudulent claims against Pat's Pad and Lounge by means of the Post Office Department of the United States and/or the United States Postal Service and in furthering such scheme or device using false and fictitious names and addresses; all in violation of Title 18, United States Code, Section 371.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the defendants committed the following overt acts:

(1) That on or about October 12, 1972, the defendant, ROSA BELL McCLENDON, filed a claim with the New York State Department of Labor using the false and fictitious name of Regina Ann Lee, claiming to have worked for Pat's Pad and Lounge from August 11, 1972 to October 1, 1972.

(2) That on and between October 25, 1972 and November 22, 1972 the defendant, ROSA BELL McCLENDON, mailed or caused to be mailed to the New York State Department of Labor

Form L0406.1 verifying that she continues to remain unemployed.

(3) That on and between November 1, 1972 and November 29, 1972, the defendant, ROSA BELL McCLENDON, received via the mails from the State of New York, Unemployment Insurance Fund, unemployment insurance benefits checks addressed to R. Lee at 617 Wilson Street, Lackawanna, New York, which she endorsed and cashed.

(4) That on or about September 8, 1972, the defendant GEORGE C. RASPBERRY, made claim upon the New York State Department of Labor for unemployment insurance benefits using the false and fictitious name of Betty Louise Collins, claiming to have worked for Pat's Pad and Lounge from September 6, 1971 to September 3, 1972.

(5) That on or about November 13, 1972 and November 17, 1972, the defendant, GEORGE C. RASPBERRY, received via the mails from the State of New York, Unemployment Insurance Fund, unemployment benefits checks in the name of T. Scott, which he endorsed and cashed.

COUNT XXXI

The Grand Jury further charges:

That beginning in or about August, 1972 and continuing to December 1, 1972, in the Western District of New York, the defendants, GEORGE C. RASPBERRY and ROSA BELL McCLENDON, the New York State Unemployment Insurance Fund of unemployment insurance benefits by filing false and fraudulent claims for such benefits using false or fictitious names and bonafide names claiming to have worked for Pat's Pad and Lounge, thereby

obtaining moneys from the New York State Unemployment Insurance Fund. That the scheme and artifice to defraud, so devised and intended to be devised by the defendants, GEORGE C. RASPBERRY and ROSA BELL McCLENDON, was in substance as follows:

(a) It was a part of the scheme and artifice that the defendants, GEORGE C. RASPBERRY and ROSA BELL McCLENDON, would claim to have worked for Pat's Pad and Lounge.

(b) It was further part of the scheme and device for the defendants, GEORGE C. RASPBERRY and ROSA BELL McCLENDON to place and cause to be placed in an authorized depository for mail matter, Form L0406 directed to the New York State Department of Labor verifying entitlement, in their own names or fictitious names, to New York State Unemployment Insurance benefits.

(c) It was further part of the scheme and artifice that the defendants would cause to be placed in an authorized depository for mail matter, checks drawn on the New York State Unemployment Insurance Fund mailed to them under real or fictitious names.

That for the purpose of executing the aforesaid scheme and artifice, that on and between October 25, 1972 and November 22, 1972, the defendant, ROSA BELL McCLENDON, mailed or caused to be mailed to the New York State Department of Labor Form L0406 verifying that she continued to remain unemployed and entitled to unemployment insurance benefits.

COUNT XXXII

The Grand Jury further charges:

That on furtherance of the scheme, artifice, and device set forth in Count XXXI above, and on and between November 1, 1972 and November 29, 1972, in the Western District of New York, the defendant, ROSA BELL McCLENDON, received via the mails from the State of New York, Unemployment Insurance Fund, unemployment insurance benefits checks addressed to R. Lee at 617 Wilson Street, Lackawanna, New York, which she endorsed and cashed; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XXXIII

The Grand Jury further charges:

That on furtherance of the scheme, artifice and device set forth in Count XXXI above, and on and between November 13, 1971 and November 17, 1972, in the Western District of New York, the defendant, George C. Raspberry, received via the mails from the State of New York, Unemployment Insurance Fund, unemployment benefits checks in the name of T. Scott, which he endorsed and cashed; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XXXIV

The Grand Jury further charges:

That beginning in or about August, 1972 and continuing through December 1, 1972, in the Western District of New York, the defendants, GEORGE C. RASPBERRY and ROSA BELL McCLENDON, did

willfully, knowingly and unlawfully combine, conspire and agree together, and with other persons to the Grand Jury unknown, to commit offenses against the United States; to wit. to violate Sections 1341 and 1342 of Title 18, United States Code, by knowingly and with intent to defraud, devise a scheme and artifice to obtain moneys from the New York State Unemployment Insurance Fund by filing false and fraudulent claims against Harland's Delicatessen by means of the Post Office Department of the United States and/or the United States Postal Service and in furthering such scheme or device using false and fictitious names and addresses; all in violation of Title 18, United States Code, Section 371.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the defendants committed the following overt acts:

(1) That on or about October 25, 1972, the defendant, GEORGE C. RASPBERRY, filed a claim for unemployment insurance benefits with the New York State Department of Labor under the false and fictitious name of Freddie Rogers, claiming to have worked for Harland's Delicatessen, from October 25, 1971 to October 22, 1972.

(2) That between November 16, 1972 and December 13, 1972, the defendant, GEORGE C. RASPBERRY, received via the mails from the State of New York, Unemployment Insurance Fund, unemployment benefits checks directed to F. Rogers, 173 Northampton Street.

(3) That on or about August 30, 1972, the defendant, ROSA BELL McCLENDON, filed a claim for unemployment insurance benefits with the New York State Department of Labor under the

false and fictitious name of Terry Lee Taylor, claiming to have worked for Harland's Delicatessen from August 30, 1971 to August 27, 1972.

CONTENT NEXT

The Grand Jury further charges:

That beginning in or about August, 1972 and continuing through December 1, 1972, in the Western District of New York, the defendants, GEORGE C. RASPBERRY and ROSA BELL McCLENDON, devised and intended to devise a scheme and artifice to defraud The New York State Unemployment Insurance Fund of unemployment insurance benefits by filing false and fraudulent claims for such benefits using false or fictitious names and bonafide names claiming to have worked for Harland's Delicatessen, thereby obtaining moneys from the New York State Unemployment Insurance Fund. That the scheme and artifice to defraud, so devised and intended to be devised by the defendants, GEORGE C. RASPBERRY and ROSA BELL McCLENDON, was in substance as follows:

- (a) It was part of the scheme and artifice that the defendants, GEORGE C. RASPBERRY and ROSA BELL McCLENDON, would claim to have worked for Harland's Delicatessen.
- (b) It was, a further part of the scheme and device for the defendants, GEORGE C. RASPBERRY and ROSA BELL McCLENDON, to place and cause to be placed in an authorized depository for mail matter, Form L012.11, falsely verifying that they, under fictitious names, worked for Harland's Delicatessen.
- (c) It was a further part of the scheme and device for the defendants, GEORGE C. RASPBERRY and ROSA BELL McCLENDON, to place and cause to be placed in an authorized depository for

mail matter, Form L0406 directed to the New York State Department of Labor, verifying their continued entitlement to New York State unemployment insurance benefits.

(d) It was a further part of the scheme and device that the defendants, GEORGE C. RASPBERRY and ROSA BELL McCLENDON, would cause to be placed in an authorized depository for mail matter, checks drawn on the New York State Unemployment Insurance Fund and mailed to them in their false or fictitious names.

That for the purpose of executing aforesaid scheme and artifice, and on or about October 25, 1972, the defendant, GEORGE C. RASPBERRY, filed a claim for unemployment insurance benefits with the New York State Department of Labor under the false and fictitious name of Freddie Rogers, claiming to have worked for Harland's Delicatessen, from October 25, 1971 to October 22, 1972; and between November 16, 1972 and December 13, 1972, the defendant, GEORGE C. RASPBERRY, received via the mails from the State of New York, Unemployment Insurance Fund, unemployment benefits checks directed to F. Rogers, 173 Northampton Street, Buffalo, New York, which he endorsed and cashed; and on or about August 30, 1972, the defendant, ROSA BELL McCLENDON, filed a claim for unemployment insurance benefits with the New York State Department of Labor under the false and fictitious name of Terry Lee Taylor, claiming to have worked for Harland's Delicatessen from August 30, 1971 to August 27, 1972; all in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT XXXVI

The Grand Jury further charges:

That beginning in or about March, 1971 and continuing through June 1, 1972, in the Western District of New York, the defendants, ELGIN C. COOK, GEORGE C. RASPBERRY, ROSA BELL McCLENDON, AND LOUIS TOLIVER, did wilfully, knowingly and unlawfully combine, conspire and agree together to commit offenses against the United States; to wit, to violate Sections 1341 and 1342 of Title 18, United States Code, by knowingly and with intent to defraud, devise a scheme and artifice to obtain monies from the New York State Unemployment Insurance Fund by filing false and fraudulent claims against Steel City Collision by means of the Post Office Department of the United States and/or the United States Postal Service and in furthering such scheme or device using false and fictitious names and addresses; all in violation of Title 18, United States Code, Section 371.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the defendants committed the following overt acts:

(1) That on or about March 17, 1972 the defendant, GEORGE C. RASPBERRY, filed a claim for unemployment insurance benefits with the New York State Department of Labor using the false and fictitious name of Bill Brown, claiming to have
1972.

(2) That on or about March 22, 1972, the defendant, GEORGE C. RASPBERRY, mailed or caused to be mailed to the New York State Department of Labor Form L012.11 verifying that one Bill Brown was employed by Steel City Collision between March 15, 1971 and March 12, 1972.

(3) That between March 28, 1972 and April 26, 1972, the defendant, GEORGE C. RASPBERRY, mailed or caused to be mailed Form L0406.1 to the New York State Unemployment Insurance Fund wherein he verified using the false and fictitious name of Bill Brown that he remained unemployed and entitled to Unemployment Insurance Fund benefits.

(4) That on and between April 7, 1972 and April 30, 1972, the defendant, GEORGE C. RASPBERRY, received via the mails from the State of New York, Unemployment Insurance Fund, unemployment benefits checks directed to B. Brown, 179 Northampton Street, Buffalo, New York which he endorsed and cashed.

(5) That on or about March 21, 1972 the defendant, ELGIN C. COOK, made claim upon the New York State Department of Labor for unemployment insurance benefits under the false and fictitious name of Sylvester Crooks, claiming to have worked for Steel City Collision from March 29, 1971 to March 26, 1972.

(6) That on or about April 1, 1971, the defendant, ELGIN C. COOK, mailed or caused to be mailed to the New York State Department of Labor, Form L012.11 verifying under the false and fictitious name of Eugene Skrozyk that one Sylvester Crooks worked for Steel City Collision from March 23, 1970 to

(7) That on or about April 1, 1971, the defendant, ROSA BELL MCLENDON, mailed or caused to be mailed to the New

York State Department of Labor Form L012.11 verifying under the false and fictitious name of Eugene Skrozyk that one Freddie Jackson worked for Steel City Collision from March 23, 1970 to March 21, 1971.

(8) That on and between April 19, 1971 and May 24, 1971, the defendant, ROSA BELL McClendon, mailed or caused to be mailed to the State of New York, Department of Labor, Form L0406, verifying under the false and fictitious name of Freddie Jackson that she remained unemployed and entitled to unemployment insurance benefits.

(9) That on and between April 26, 1971 and May 29, 1971, the defendant, ROSA BELL McCLENDON, received via the mails, various checks drawn on the State of New York, Unemployment Insurance Fund, representing unemployment insurance benefits and directed to F. Jackson, 566 Jefferson Avenue, Buffalo, New York, which she endorsed and cashed.

(10) That on or about March 17, 1972, the defendant, GEORGE C. RASPBERRY, filed a claim for unemployment benefits with the New York State Department of Labor using the false and fictitious name of James Turner, claiming to have worked for Steel City Collision from March 15, 1971, to March 12, 1972.

(11) That on and between March 29, 1972 and April 26, 1972, the defendant, GEORGE C. RASPBERRY, mailed or caused to be mailed to the New York State Unemployment Insurance Fund Form L0406.1 wherein he claimed, using the false and fictitious name of James Turner, that he remained unemployed and entitled to unemployment insurance benefits.

(12) That on and between April 6, 1972 and May 3, 1972, the defendant, GEORGE C. RASPBERRY, received via the mails from the State of New York, Unemployment Insurance Fund, various checks representing unemployment insurance fund benefits directed to J. Turner, 173 Northampton Street, Buffalo, New York, which he endorsed and cashed.

(13) That on or about January 20, 1972, the defendant, LOUIS TOLIVER, filed a claim for unemployment benefits with the New York State Department of Labor using the false and fictitious name of Louis C. Rice, claiming to have worked for Steel City Collision from July 14, 1970 to May 18, 1972.

(14) That on and between January 30, 1972 and February 27, 1972, the defendant, LOUIS TOLIVER, mailed or caused to be mailed to the New York State Unemployment Insurance Fund, Form L0406.1 wherein he claimed, using the false and fictitious name of Louis C. Rice, to be unemployed and entitled to unemployment insurance benefits.

(15) That on and between February 8, 1972 and March 3, 1972, the defendant, LOUIS TOLIVER, received via the mails from the State of New York, Unemployment Insurance Fund, various checks representing Unemployment Insurance Fund benefits directed to L. C. Rice, 71 Wilson Street, Lackawanna, New York, which he endorsed and cashed.

(16) That on or about January 20, 1972, the defendant, LOUIS TOLIVER, filed a claim for unemployment benefits with the

name of Richard Rice, claiming to have worked for Steel City Collision from September 5, 1970 to January 14, 1972.

(17) That on and between March 19, 1972 and April 16, 1972, the defendant, LOUIS TOLIVER, mailed or caused to be mailed to the New York State Unemployment Insurance Fund Form LD406.1 wherein he claimed, using the false and fictitious name of Richard Rice, to be unemployed and entitled to unemployment insurance benefits.

(18) That on and between March 27, 1972 and April 24, 1972, the defendant, LOUIS TOLIVER, received via the mails from the State of New York Unemployment Insurance Fund, various checks representing Unemployment Insurance Fund benefits, directed to R. Rice, 3416 Highland Avenue, Niagara Falls, New York, which he endorsed and cashed.

COURT XXXVII

The Grand Jury further charges:

That beginning in or about March, 1971 and continuing through June 1, 1972, in the Western District of New York, the defendants, EUGEN C. COOK, GEORGE C. RASPBERRY, ROSA BELL McLENDON, and LOUIS TOLIVER, devised and intended to devise a scheme and artifice to defraud the New York State Unemployment Insurance Fund of unemployment insurance benefits by filing false and fraudulent claims for such benefits using false and fictitious names, claiming to have worked for Steel City Collision, thereby obtaining the scheme and artifice to defraud, so devised and intended to be devised by the defendants, EUGEN C. COOK, GEORGE C. RASPBERRY, ROSA BELL McLENDON, and LOUIS TOLIVER, was in substance as follows:

(a) It was a part of the scheme and artifice that the defendants would claim to have worked for Steel City Collision.

(b) It was a further part of the scheme and artifice that the defendants would verify, by mailing to the New York State Department of Labor, Form L012.11, verifying that the said defendants used various false and fictitious names worked for Steel City Collision.

(c) It was a further part of the scheme and device for the defendants to place and cause to be placed in an authorized depository for mail matter, Form L0406 directed to the New York State Department of Labor verifying entitlement to New York State unemployment insurance benefits.

(d) It was a further part of the scheme and artifice that the defendants would cause to be placed in an authorized depository for mail matter checks drawn on the New York State Unemployment Insurance Fund and mailed to them under their real or fictitious names.

That for the purpose of executing the aforesaid scheme and artifice, and on or about March 22, 1972, the defendant, GEORGE C. RASPBERRY, mailed or caused to be mailed to the New York State Department of Labor, Form L012.11 verifying that one Bill Brown was employed by Steel City Collision between March 15, 1971 and March 12, 1972; all in violation of Title 18, United States Code, §§1341 and 2.

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XXXVII above, and on or about March 22, 1972,

the defendant, GEORGE C. RASPBERRY, mailed or caused to be mailed to the New York State Department of Labor, Form L012.11 verifying that one Bill Brown was employed by Steel City Collision between March 15, 1971 and March 12, 1972; all in violation of Title 18, United States Code, §§1341 and 2.

COUNT XXXIX

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XXXVIII above, and on and between March 28, 1972 and April 26, 1972, in the Western District of New York, the defendant, GEORGE C. RASPBERRY, mailed or caused to be mailed Form L0406.1 to the New York State Unemployment Insurance Fund wherein he verified using a false and fictitious name of Bill Brown, that he remained unemployed and entitled to unemployment insurance fund benefits; On violation of Title 18, United States Code §§1341 and 2.

COUNT XL

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count XXXVII above, and on and between April 7, 1972 and April 30, 1972, in the Western District of New York, the defendant, GEORGE C. RASPBERRY, received via the mails from the State of New York, Unemployment Insurance Fund, unemployment Buffalo, New York; in violation of Title 18, United States Code, §§1341 and 2.

COUNT

The Grand Jury er charges:

That in furtherance of e scheme, artifice and device as set forth in Count ~~XXXXXX~~ above, and on or about April 1, 1971, in the Western District of New York, the defendant, ELGIN C. COOK, mailed caused to be mailed to the New York State Department of Labor, Form L012.11, verifying under the false and fictitious name of Eugene Skrozyk that one Sylvester Crook ed for Steel City Collision from March 23, 1970 to n 21, 1971; all in violation of Title 18, United States Code, §§1341 and 2.

COUNT XLII

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count XXXVII above, and on or about April 1, 1971, in the Western District of New York, the defendant, ROSA BELL McLENDON, mailed and caused to be mailed to the New York State Department of Labor, Form LO12.11, verifying under the false and fictitious name of Eugene Skrozyk that one Freddie Jackson worked for Steel City Collision from March 23, 1970 to March 21, 1971; all in violation of Title 18, United States Code, §1341 and §2.

COUNT XLIII

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count XXXVII above, and on or between April 19, 1971 and May 24, 1971, in the Western District of New York, the defendant, ROSA BELL McLENDON mailed and caused to be mailed to the State of New York, Department of Labor, Form LO406, verifying under the false and fictitious name of Freddie Jackson that she remained unemployed and entitled to unemployment insurance benefits; all in violation of Title 18, United States Code, §1341 and §2.

COUNT XLIV

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count XXXVII above, and on or between April 26, 1971 and May 29, 1971, in the Western District of New York, the defendant, ROSA DELL McLENDON, received via the mails, various checks drawn on the State of New York, Unemployment Insurance Fund representing unemployment insurance benefits and directed to F. Jackson, 566 Jefferson Avenue, Buffalo, New York; all in violation of Title 18, United States Code, §1341 and §2.

COUNT XLV

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count XXXVII above, and between March 29, 1972 and April 26, 1972, in the Western District of New York, the defendant, GEORGE C. RASPBERRY, mailed or caused to be mailed to the New York State Insurance Fund Form L0406.1, wherein he claimed, using the false and fictitious name of James Turner, to be unemployed and entitled to unemployment insurance benefits; all in violation of Title 18, United States Code, §1341 and §2.

COUNT XLVI

That in furtherance of the scheme, artifice and device as set forth in Count XXXVII above, and on or between

April 6, 1972 and May 2, 1972, in the Western District of New York, the defendant, GEORGE C. RASPBERRY, received via the mails from the State of New York, Unemployment Insurance Fund, various checks representing unemployment insurance fund benefits directed to J. Turner, 173 Northampton Street, Buffalo, New York; all in violation of Title 18, United States Code, §1341 and §2.

COUNT XLVII

The Grand Jury Further Charges:

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That in furtherance of the scheme, artifice and device as set forth in Count XXXVII above, and between January 30, 1972 and February 27, 1972, in the Western District of New York, the defendant, LOUIS TOLIVER, mailed or caused to be mailed to the New York State Insurance Fund, Form LO406.1 wherein he claimed, using a false and fictitious name of Louis C. Rice, to be unemployed and entitled to unemployment insurance benefits; all in violation of Title 18, United States Code, §1341 and §2.

COUNT XLVIII

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count XXXVII above, and between January 30, 1972 and February 27, 1972, in the Western District of New York, the defendant, LOUIS TOLIVER, received, via

the mails from the State of New York, Unemployment Insurance Fund, various check representing unemployment insurance fund benefits directed to L. C. Rice, 3913 Olcott Street, Lackawanna, New York, and 71 Wilson, Lackawanna, New York; all in violation of Title 18, United States Code, §1341 and §2.

COUNT XLIII

The Grand Jury Further Charges:

dismiss

That in furtherance of the scheme, artifice and device as set forth in Count XXXVII above, and on or between March 19, 1972 and April 16, 1972, in the Western District of New York, the defendant, LOUIS TOLIVER, mailed or caused to be mailed to the New York State Insurance Fund, Form LO406.1, wherein he claimed, using a false and fictitious name of Richard Rice, to be unemployed and entitled to unemployment insurance benefits; all in violation of Title 18, United States Code, §1341 and §2.

COUNT L

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count XXXVII above, and between March 27, 1972 and April 24, 1972, in the Western District of New York, the defendant, LOUIS TOLIVER, received via

Fund, various checks representing unemployment insurance fund benefits directed to R. Rice, 3416 Hyland Avenue, Niagara Falls, New York; all in violation of Title 18, United States Code, §1341 and §2.

COUNT LI

The Grand Jury Further Charges:

That beginning in or about August, 1972 and continuing through January 1, 1973, in the Western District of New York, the defendants, ELGIN C. COOK, GEORGE C. RASPBERRY and LOUIS TOLIVER, did, wilfully, knowingly and unlawfully, combine, conspire and agree together to commit offenses against the United States; to wit, to violate Sections 1341 and 1342 of Title 18, United States Code, by knowingly and with intent to defraud, devise a scheme and artifice to obtain moneys from the New York State Unemployment Insurance Fund by filing false and fraudulent claims against Bee Gee Arco Service Station by means of the Post Office Department of the United States and/or the United States Postal Service and in furthering such scheme or device using false and fictitious names and addresses; all in violation of Title 18, United States Code, Section 371.

OVERT ACTS

In furtherance of the objects and to effect the objects thereof, the defendants committed the following overt acts:

(1) That on or about August 23, 1972, the defendant, ELGIN C. COOK, filed a claim for unemployment insurance benefits with the New York State Department of Labor under the false and fictitious name of Willie M. Davis, claiming to have worked for Bee Gee Arco Service Station from August 23, 1971 to August 20, 1972.

(2) That on or about August 31, 1972, the defendant, ELGIN C. COOK, filed a claim for unemployment insurance benefits with the New York State Department of Labor under the false and fictitious name of Johnnie Gray, claiming to have worked for Bee Gee Arco Service Station from August 30, 1971 to August 27, 1972.

(3) That on or about November 3, 1972, the defendant, ELGIN C. COOK, filed a claim for unemployment insurance benefits with the New York State Department of Labor using the false and fictitious name of Leroy C. Jefferson, claiming to have worked for Bee Gee's Arco Service Station from November 8, 1971 to November 5, 1972.

(4) That on or about August 28, 1972, the defendant, GEORGE C. RASPBERRY, filed a claim for unemployment insurance benefits with the New York State Department of Labor using the false and fictitious name of James E. Willie, claiming to have worked for Bee Gee's Arco Service Station

(5) That on or about September 8, 1972, the defendant, ELGIN C. COOK, mailed or caused to be mailed to the New York State Department of Labor Form L012.11 verifying that one Johnnie Gray was employed by Bee Gee Arco Service Station, from August 30, 1971 to August 27, 1972.

(6) That on or about November 18, 1972, the defendant, ELGIN C. COOK, mailed or caused to be mailed to the New York State Department of Labor Form L012.11 verifying that one Leroy Jefferson worked for Bee Gee Arco Service Station from November 8, 1971 to November 5, 1972.

(7) That on or about August 28, 1972, the defendant, GEORGE C. RASPBERRY, mailed or caused to be mailed to the New York State Department of Labor Form L012.11 verifying that one James E. Willis was employed by Bee Gee Arco Service Station from August 23, 1971 to August 20, 1972.

(8) That on or about October 6, 1972, the defendant, LOUIS TOLIVER, filed a claim for unemployment insurance benefits with the New York State Department of Labor using a false and fictitious name of Robert J. Owens, claiming to have worked for Bee Gee's Arco Service Station from July 13, 1971, to October 2, 1972.

(9) That on or about September 20, 1972, the defendant, LOUIS TOLIVER, filed a claim for unemployment insurance with the New York State Department of Labor using the false and fictitious name of John P. Toliver, claiming to have worked for Bee Gee's Arco Service Station from March 18, 1970 to September 21, 1972.

COUNT LII

The Grand Jury Further Charges:

That beginning on or about August, 1972 and continuing through January 1, 1973, in the Western District of New York, the defendants, ELGIN C. COOK, GEORGE C. RASPBERRY and LOUIS TOLIVER, devised and attempted to devise a scheme and artifice to defraud the New York State Unemployment Insurance Fund of unemployment insurance benefits by filing false and fraudulent claims for benefits using false and fictitious names claiming to have worked for Bee Gee Arco Service Station, thereby obtaining moneys from the New York State Unemployment Insurance Fund. That the scheme and artifice to defraud, so devised and attempted to be devised by the defendants, was in substance as follows:

(a) It was a part of the scheme and artifice that the defendants would claim to have worked for Bee Gee Arco Service Station under fictitious names.

(b) It was a further part of the scheme and device for the defendants to place and caused to be placed in an authorized depository for mail matter, Form LO 12.11, directed to the New York State Department of Labor, verifying that they, using false and fictitious names, were employed by Bee Gee Arco Service Station.

(c) It was a further part of the scheme and device for the defendants to place and caused to be placed in an authorized depository for mail matter, Form LO 406 directed to the New York State Department of Labor verifying their entitlement to New York State unemployment insurance benefits.

(d) It was a further part of the scheme and device that the defendants would cause to be placed in an authorized depository for mail matter, checks drawn on the New York State Unemployment Insurance Fund and directed to them under false and fictitious names.

That for the purpose of executing the aforesaid scheme and artifice, and on September 8, 1972, the defendant, ELGIN C. COOK, mailed or caused to be mailed to the New York State Department of Labor, Form LO 12.11 verifying that one Johnnie Gray was employed by Bee Gee Arco Service Station; all in violation of Title 18, United States Code, §1341 and §2.

COUNT LIII

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device in Count LII above, and on November 18, 1972, in the Western District of New York, the defendant, New York State Department of Labor, Form LO 12.11 verifying that one Leroy C. Jefferson worked for Bee Gee

Arco Service Station; all in violation of Title 18,
United States Code, Sections 1341 and 2.

COUNT LIV

The Grand Jury Further Charges:

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That in furtherance of the scheme, artifice and
device as set forth in Count LII above, and on and
between October 6, 1972 and November 19, 1972 in the
Western District of New York, the defendant, LOUIS TOLIVER,
mailed or caused to be mailed to the State of New York,
Department of Labor, Form LO406.1, verifying under the
false and fictitious name of Richard J. Owens that he
remained unemployed and entitled to unemployment insur-
ance benefits; all in violation of Title 18, United
States Code, §1341 and §2.

COUNT LV

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and
device as set forth in Count LII above, and on and
between November 1, 1972 and November 24, 1972, in the
Western District of New York, the defendant, LOUIS TOLIVER,
received via the mails, various checks drawn on the State
of New York, Unemployment Insurance Fund, representing
unemployment insurance benefits and directed to R. J. Owens,
of Title 18, United States Code, §1341 and §2.

COUNT LVI

The Grand Jury Further Charges:

lism. That in furtherance of the scheme, artifice and device as set forth in Count LII above, and on and between October 29, 1972 and November 26, 1972, in the Western District of New York, the defendant, LOUIS TOLIVER, mailed and caused to be mailed to the State of New York, Department of Labor, Form L0403.1, verifying under the false and fictitious name of John T. Toliver that he remained unemployed and entitled to unemployment insurance benefits; all in violation of Title 18, United States Code, §1341 and §2.

COUNT LVII

The Grand Jury Further Charges:

That in furtherance of the scheme, artifice and device as set forth in Count LII above, and on and between November 6, 1972 and December 4, 1972, in the Western District of New York, the defendant, LOUIS TOLIVER, received via the mails, various checks drawn on the State of New York, Unemployment Insurance Fund, representing unemployment insurance benefits and directed to J. T. Toliver, 71 B Wilson Street, Lackawanna, New York; all in violation of Title 18, United States Code, §1341 and §2.

COUNT LVIII

The Grand Jury further charges:

That beginning in or about May, 1971 and continuing through September 1, 1972, in the Western District of New York, the defendants, MARY JEAN ASKEW, ROSA BELL McCLENDON, and LOUIS TOLIVER, did willfully, knowingly and unlawfully combine, conspire and agree together, and with other persons to this Grand Jury unknown, to commit offenses against the United States; to wit, to violate Sections 1341 and 1342 of Title 18, United States Code, by knowingly and with intent to defraud, devise a scheme and artifice to obtain moneys from the New York State Unemployment Insurance Fund by filing false and fraudulent claims against Almasi's Tavern, a/k/a Fat Daddy's Grill by means of the Post Office Department of the United States and/or the United States Postal Service and in furthering such scheme or device using false and fictitious names and addresses; all in violation of Title 18, United States Code, Section 371.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the defendants committed the following overt acts:

(1) On or about April 30, 1971, the defendant, MARY JEAN ASKEW, filed a claim for unemployment insurance benefits for the New York State Department of Labor under the false and fictitious name of Margaret Askew, claiming to have worked for Fat Daddy's Bar and Grill, a/k/a Almasi's Tavern from April 27, 1970 to April 15, 1971.

*Testimony
Clerk 4/9/72
4/30/72
no checks
under name
Mary Askew*

(2) As a result thereof and on and between April 12, 1972 and May 11, 1972, the defendant, MARY JEAN ASKEW, under the false and fictitious name of Margaret Askew, received, via the mails, unemployment insurance fund checks from the State of New York, Unemployment Insurance Fund.

(3) On or about May 27, 1971, the defendant, ROSA BELL McCLENDON, filed with the New York State Department of Labor a claim for benefits under the false and fictitious name of Rosa Belle, claiming to have worked for Fat Daddy's Bar and Grill, a/k/a Almasi's Tavern from May 25, 1970 to May 23, 1971.

(4) On and between January 24, 1972 and April 24, 1972, the defendant, ROSA BELL McCLENDON, mailed or caused to be mailed to the New York State Unemployment Insurance Fund Form LO406.1 verifying that she remained unemployed and entitled to unemployment insurance benefits.

(5) On and between January 28, 1972 and April 28, 1972, the defendant, ROSA BELL McCLENDON, received via the mails, from the State of New York, Unemployment Insurance Fund, various checks directed to R. Belle, 64 Olcott Street, Lackawanna, New York, which she endorsed and cashed.

(6) On or about February 2, 1972, the defendant, LOUIS TOLIVER, filed with the New York State Department of Labor, a claim for benefits under the false and fictitious name of Louis Clybarn, claiming to have worked for Almasi's Tavern from April 10, 1970 to January 26, 1972.

(7) On and between March 26, 1972 and July 9, 1972, the defendant, LOUIS TOLIVER, mailed or caused to be mailed to the New York State Unemployment Insurance Fund, Form LO406.1, verifying that he remained unemployed and entitled to unemployment insurance benefits.

(8) On and between April 3, 1972 and July 14, 1972, the defendant, LOUIS TOLIVER, received via the mails, from the State of New York, Unemployment Insurance Fund, various checks directed to L. Clyburn, 170 Bigelow Place, Depew, New York, which he endorsed and cashed.

COUNT LIX

The Grand Jury further charges:

That beginning in or about May, 1971 and continuing through September 1, 1972, in the Western District of New York, the defendants, MARY JEAN ASKEW, ROSA BELL McCLENDON, and LOUIS TOLIVER, devised and intended to devise a scheme and artifice to defraud the New York State Unemployment Insurance Fund of unemployment insurance benefits by filing false and fraudulent claims for such benefits using false or fictitious names and bonafide names claiming to have worked for Almasi's Tavern, a/k/a Fat Daddy's Grill, thereby obtaining moneys from the New York State Unemployment Insurance Fund. That the scheme and artifice to defraud, so devised and intended to be devised by the defendants, MARY JEAN ASKEW, ROSA BELL McCLENDON, and LOUIS TOLIVER, was in substance as follows:

(a) It was a part of the scheme and artifice that the defendants, MARY JEAN ASKEW, ROSA BELL McCLENDON, and LOUIS TOLIVER, would claim to have worked for Almasi's Tavern, a/k/a Fat Daddy's Grill, under real or fictitious names.

(b) It was a further part of the scheme and device for the defendants, MARY JEAN ASKEW, ROSA BELL McCLENDON, and LOUIS TOLIVER, to place and cause to be placed in an authorized depository for mail matter, Form LO12.11, directed to the New York State Department of Labor, verifying that they, using false and fictitious names, were employed by Almasi's Tavern, a/k/a Fat Daddy's Grill.

(c) It was a further part of the scheme and device for the defendants to place and cause to be placed in an authorized depository for mail matter, Form LO406 directed to the New York State Department of Labor verifying their entitlement to New York State Unemployment Insurance benefits.

(d) It was a further part of the scheme and device that the defendants would cause to be placed in an authorized depository for mail matter, checks drawn on the New York State Unemployment Insurance Fund and directed to them under false and fictitious names.

That for the purpose of executing the aforesaid scheme and artifice, and between April 12, 1972 and May 11, 1972, the defendant, MARY JEAN ASKEW, caused to be deposited in an authorized depository for mail matter, various checks representing unemployment insurance funds from the State of New York, Unemployment Insurance Fund and directed to her under the false and fictitious name of Margaret Askew; all in violation of Title 18, United States Code, §§1341 and 2.

COUNT LX

That in furtherance of the scheme, artifice and device as set forth in Count LIX, above, and on and between January 24, 1972 and April 28, 1972, in the

65

Western District of New York, the defendant, ROSA BELL McCLENDON, mailed or caused to be mailed to the New York State Unemployment Insurance Fund, Form LO406.1 verifying that she remained unemployed and entitled to unemployment insurance benefits; all in violation of Title 18, U.S.C., §§1341 and 2.

COUNT LXI

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count LXI, above, and between January 28, 1972 and April 28, 1972, in the Western District of New York, the defendant, ROSA BELL McCLENDON, caused to be placed in an authorized depository for mail matter, checks drawn on the State of New York, Unemployment Insurance Fund and directed to her under the false and fictitious name of R. Belle at 64 Olcott Street, Lackawanna, New York; all in violation of Title 18, U.S.C., §§1341 and 2.

COUNT LXII

The Grand Jury further charges:

dis m.
That in furtherance of the scheme, artifice and device as set forth in Count LIX, above, and on and between March 26, 1972 and July 9, 1972, in the Western District of New York, the defendant, LOUIS TOLIVER, mailed or caused to be mailed to the New York State Unemployment Insurance Fund, Form LO406.1, verifying, using the false and fictitious name of Louis Clyburn, that he remained unemployed and entitled to unemployment insurance benefits; all in violation of Title 18, U.S.C., §§1341 and 2.

COUNT LXIII

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count LIX , above, and on and between April 3, 1972 and July 14, 1972, in the Western District of New York, the defendant, LOUIS TOLIVER, caused to be placed in an authorized depository for mail matter, various checks drawn on the State of New York, Unemployment Insurance Fund and directed to him under the false and fictitious name of L. Clyburn; all in violation of Title 18, U.S.C., §§1341 and 2.

COUNT LXIV

The Grand Jury further charges:

That beginning in or about July, 1971 and continuing through August 3, 1972, in the Western District of New York, the defendants, ELGIN C. COOK, KATE LEE COOK, ROSA BELL McCLENDON, and LOUIS TOLIVER, did willfully, knowingly and unlawfully combine, conspire and agree together, and with other persons to this Grand Jury unknown, to commit offenses against the United States; to wit, to violate Sections 1341 and 1342 of Title 18, United States Code, by knowingly and with intent to defraud, devise a scheme and artifice to obtain moneys from the New York State Unemployment Insurance Fund by filing false and fraudulent claims against Charlie's Sunoco Station by means of the Post Office Department of the United States and/or the United States Postal Service and in furthering such scheme or device using false and fictitious names and addresses; all in violation of Title 18, United States Code, Section 371.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the defendants committed the following overt acts:

(1) On or about July 22, 1971, the defendant, ELGIN C. COOK, filed a claim for unemployment benefits with the State of New York, Department of Labor, claiming to have worked for Charlie's Sunoco Station from March, 1971 to May, 1971.

(2) On and between September 22, 1971 and May 12, 1972, as a result of the aforesaid claim, the defendant, ELGIN C. COOK, received, via the mails from the State of New York, Unemployment Insurance Fund, various checks addressed to E. C. Cook, 379 Emslie Street, Buffalo, New York.

(3) On or about November 29, 1971, the defendant, ELGIN C. COOK, filed a claim for unemployment insurance benefits with the State of New York, Department of Labor, claiming to have worked for Charlie's Sunoco Station from November 30, 1970 to November 28, 1971, under the false and fictitious name of Edward C. Cook residing at 64 Olcott Street, Lackawanna, New York.

(4) On and between December 21, 1971 and July 18, 1972, the defendant, ELGIN C. COOK, using the false and fictitious name of Edward C. Cook, caused to be deposited in an authorized depository for mail matter, Form LO406.1, directed to the New York State Department of Labor, verifying that he continued to be unemployed and eligible for New York State unemployment insurance benefits.

(5) On and between December 27, 1971 and July 24, 1972, the defendant, ELGIN C. COOK, received via the mails, various checks drawn upon the State of New York, Unemployment Insurance Fund and mailed to him under the name of E. C. Cook, 64 Olcott Street, Lackawanna, New York from Albany, New York.

(6) That the said checks were endorsed by the defendant, ELGIN C. COOK, in his own name or in false and fictitious names and cashed by him.

(7) On or about November 18, 1971, the defendant, ELGIN C. COOK, filed a claim with the New York State Department of Labor for unemployment insurance benefits under the false and fictitious name of Torre L. Mitchell, claiming to have worked for Charlie's Sunoco Station from November 16, 1970 to November 14, 1971.

(8) On or about January 5, 1972, the defendant, ELGIN C. COOK, filed a claim for unemployment insurance benefits with the New York State Department of Labor under the false and fictitious name of Johnnie M. Clark, claiming to have worked for Charlie's Sunoco Station from January 4, 1971 to January 2, 1972.

(9) That as a result of the claims as aforesaid, the defendant, ELGIN C. COOK, received, via the mails, various unemployment insurance checks drawn upon the State of New York, Unemployment Insurance Fund and directed to him under the false and fictitious names of Torea L. Mitchell and Johnnie M. Clark between January 24, 1972 and August 9, 1972.

(10) That New York State Unemployment Insurance check dated March 10, 1972 made payable to E. C. Cook was endorsed by the defendant, ROSA BELL McCLENDON.

(11) That New York State Unemployment Insurance check dated January 27, 1972 payable to E. C. Cook was endorsed by the defendant, ROSA BELL MCCLENDON.

(12) That New York State Unemployment Insurance check dated September 27, 1971 payable to E. C. Cook was endorsed by the defendant, KATE LEE COOK.

(13) That New York State Unemployment Insurance check dated October 4, 1971 payable to E. C. Cook was endorsed by the defendant, KATE LEE COOK.

(14) On or about January 1, 1972, the defendant, LOUIS TOLIVER, filed a claim for unemployment insurance benefits with the State of New York, Department of Labor, claiming to have worked for Charlie's Sunoco Station from March 27, 1971 to December 16, 1971, under the false and fictitious name of James Cole.

(15) On and between January 9, 1972 and May 14, 1972, the defendant, LOUIS TOLIVER, using the false and fictitious name of James Cole, caused to be deposited in an authorized depository for mail matter, Form LO406.1, directed to the New York State Department of Labor, verifying that he continued to be unemployed and eligible for New York State unemployment insurance benefits.

(16) On and between January 2, 1972 and May 18, 1972, the defendant, LOUIS TOLIVER, received via the mails, various checks drawn upon the State of New York, Unemployment Insurance Fund, and mailed to him under the false and fictitious name of J. Cole, 374 Madison Street, Buffalo, New York.

(17) That the said checks were endorsed by the defendant, LOUIS TOLIVER, in the false and fictitious name of J. Cole and cashed by him.

COUNT

The Grand Jur further charges:

That beginning in or about July, 1971 and continuing through August 3, 1972, in the Western District of New York, the defendants, ELGIN C. COOK, KATE LEE COOK, ROSA BELL McCLENDON, and LOUIS TOLIVER, devised and intended to devise a scheme and artifice to defraud the New York State Unemployment Insurance Fund of unemployment insurance benefits by filing false and fraudulent claims for such benefits using false and fictitious names and bonafide names, claiming to have worked for Charlie's Sunoco Station, thereby obtaining moneys from the New York State Unemployment Insurance Fund. That the scheme and artifice to defraud, so devised and intended to be devised by the defendants, ELGIN C. COOK, KATE LEE COOK, ROSA BELL McCLENDON, and LOUIS TOLIVER, was in substance as follows:

(a) It was a part of the scheme and artifice that the defendant, ELGIN C. COOK, would claim to have worked for Charlie's Sunoco Station under the false and fictitious names of Edward C. Cook, Toree L. Mitchell and Johnnie M. Clark, as well as in his own name.

(b) It was a further part of the scheme and device for the defendants, ELGIN C. COOK, KATE LEE COOK and ROSA BELL McCLENDON, to place and cause to be placed in an authorized depository for mail matter, Form LO12.11, directed to the New York State Department of Labor, verifying that the defendant, ELGIN C. COOK, using false and fictitious names, was employed by Charlie's Sunoco Station.

(c) It was a further part of the scheme and device for the defendants to place and cause to be placed

in an authorized depository for mail matter, Form LO406 directed to the New York State Department of Labor, verifying the entitlement of the fictitious named employees to New York State Unemployment Insurance benefits.

(d) It was a further part of the scheme and device that the defendants would cause to be placed in an authorized depository for mail matter, checks drawn on the New York State Unemployment Insurance Fund and directed to them under various false and fictitious names.

That for the purpose of executing the aforesaid scheme and artifice, and between July 22, 1971 and August 3, 1972, the defendant, ELGIN C. COOK, caused to be placed in an authorized depository for mail matter, numerous checks drawn on the New York State Unemployment Insurance Fund and made payable to the various defendants under the false and fictitious names of Edward C. Cook, Johnnie M. Clark and Torre L. Mitchell, some of which checks were endorsed by the defendants, ROSA BELL MCCLENDON and KATE LEE COOK; all in violation of Title 18, U.S.C., §§1341 and 2.

COUNT LXVI

The Grand Jury further charges:

See
That in furtherance of a scheme, artifice and device as set forth in Count LXV above, and between January 9, 1972 and May 14, 1972, in the Western District of New York, the defendant, LOUIS BOLIVIER, caused to be mailed to the New York State Department of Labor, Form LO406.1, verifying under the false and fictitious name of James Cole, that he continued to be unemployed and entitled to unemployment insurance benefits; all in violation of Title 18, U.S.C., §§1341 and 2.

COUNT LXVII

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count LXV above, and on and between January 2, 1972 and May 18, 1972, in the Western District of New York, the defendant, LOUIS TOLIVER, received via the mails from the State of New York, Unemployment Insurance Fund, unemployment insurance benefits checks addressed to J. Cole, at 374 Madison Street, Buffalo, New York; all in violation of Title 18, United States Code, §§1341 and 2.

COUNT LXVIII

The Grand Jury further charges:

That beginning in or about August, 1972 and continuing to December 11, 1972, in the Western District of New York, the defendants, ELGIN C. COOK and LOUIS TOLIVER, devised and intended to devise a scheme and artifice to defraud the New York State Unemployment Insurance Fund of unemployment insurance benefits by filing false and fraudulent claims for such benefits by the use of false and fictitious names, claiming to have worked for Dickson's Sunoco Station, thereby obtaining moneys from the New York State Unemployment Insurance Fund. That the scheme and artifice to defraud, so devised and intended to be devised by the defendant was in substance as follows:

(a) It was a part of the scheme and artifice that the defendant, ELGIN C. COOK, claimed to have worked for Dickson's Sunoco Station under the false and fictitious names of Jim Hooker, Terry Rogers, Arthur Ward and Carl Collier.

(b) It was a further part of the scheme and artifice that the defendant, ELGIN C. COOK, would verify, by mailing to the New York State Department of Labor, Form LO12.11, verifying, falsely and fictitiously as the owner of Dickson's Sunoco Station, that the above-named fictitious persons worked for him.

(c) It was a further part of the scheme and artifice for the defendants, ELGIN C. COOK and LOUIS TOLIVER, under the false and fictitious names as aforesaid, to place and cause to be placed in an authorized depository for mail matter, Form LO406, directed to the New York State Department of Labor, verifying entitlement to New York State unemployment insurance benefits.

(d) . It was a further part of the scheme and artifice that the defendants, ELGIN C. COOK and LOUIS TOLIVER, would cause to be placed in an authorized depository for mail matter, checks drawn upon the New York State Unemployment Insurance Fund and mailed to him under the fictitious names aforesaid.

That for the purpose of executing the aforesaid scheme and artifice and on and between September 16, 1972 and December 11, 1972, the defendant, ELGIN C. COOK, caused to be deposited in an authorized depository for mail matter, various checks drawn on the New York State Unemployment Insurance Fund mailed from Albany, New York to him under the fictitious names as aforesaid; all in violation of Title 18, U.S.C., §1341.

~~COUNT XIX~~

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count 68, above, and on and between October 29, 1972 and December 3, 1972, in the

Western District of New York, the defendant, LOUIS TOLIVER, placed or caused to be placed in an authorized depository for mail matter, Form LO406.1, directed to the New York State Department of Labor, verifying under the false and fictitious name of Terry Rogers, that he was unemployed and continued to be entitled to unemployment insurance benefits; all in violation of Title 18, U.S.C., §§1341 and 2.

COUNT LXXI

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count 63 , above, and between November 3, 1972 and December 3, 1972, the defendant, LOUIS TOLIVER, caused to be deposited in an authorized depository for mail matter, various checks drawn on the New York State Unemployment Insurance Fund, mailed from Albany, New York and directed to him, under the false and fictitious name of Terry Rogers; all in violation of Title 18, U.S.C., §§1341 and 2.

COUNT LXXII

The Grand Jury further charges:

That in furtherance of the scheme, artifice and device as set forth in Count 63 , above, and between September 16, 1972 and December 11, 1972, in the Western District of New York, the defendant, ELGIN C. COOK, for the purpose of conducting, promoting and carrying on by means of the United States Postal Service the aforesaid scheme and device to defraud and

for obtaining money and property by means of such false and fraudulent pretenses, representations and promises, did use and assume the fictitious, false and assumed names of Jim Hooker, Terry Rogers, Arthur Ward and Carl Collier; all in violation of Title 18, United States Code, §1342.

JOHN T. ELFVIN
United States Attorney

A TRUE BILL:

Richard S. Schreiner
Foreman

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No. _____

UNITED STATES DISTRICT COURT

WESTERN District of NEW YORK

_____ XENOSCHIK

THE UNITED STATES OF AMERICA

vs.

ELGIN C. COOK, KATE LEE COOK, MARY JEAN ASKEW,
ROSA-BELLE McCLINTON, GEORGE C. RASPBERRY,
CAINETTA RASPBERRY, NATHANIEL ASKEW, ROBERT
ALLEN ASKEW and TAMIS TULLIVER

INDICTMENT

SUPERSEEDING

A true bill,

W. Frederick J. Schaefer

Prosecutor.

Filed in open court this 12th day
of September, A. D. 1966

Clerk.

Bell, \$ _____

1 PROCEEDINGS: After recess, 11:58 a.m.

2 APPEARANCES: As before noted.

3

4 (Defendants present.)

5 (Jury present.)

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7 THE COURT:

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Ladies and gentlemen, we have been together for some time and now it is time for me to explain to you to the best of my ability the law which applies in this case. There are several, first of all, practical considerations which we ought to talk about so that you can listen a little more at ease to my charge. After I charge you on the law, the marshal will make arrangements for you to have a luncheon break. It will be at one of the local restaurants. During that break do not discuss the case. Your deliberation should only be carried on in the jury room and you can do that after you have returned from the luncheon break.

It is not my function here to tell you how long you should deliberate on any case. You deliberate as long as you have

1 to reasonably, carefully, conscientiously
2 to arrive at a verdict which is fair to
3 the defendants in this case and fair to
4 your conscience as you see it, consider-
5 ing the evidence in the case and consider-
6 ing my charge on the law. My plan is
7 that at the end of the afternoon, perhaps
8 around 5:00 o'clock or so to ask you then
9 what your pleasure is if you have not
10 reached a verdict by that time, whether
11 you want to continue to deliberate or to
12 go back to your homes and come back in
13 the morning. Whatever you want to do, we
14 would leave that up to you. I certainly
15 would not have you stay overnight. If
16 you desire to deliberate a little bit
17 into the evening, if you feel comfortable
18 about it, that is up to you, and if so,
19 we would maybe take a break for an
20 evening meal at about 6:00 o'clock, but
21 again, and this I am going to tell you,
22 as you know by now, you must reach a
23 unanimous verdict, but as far as these
24 practical considerations, whatever the
25 general consensus is, but so that you can

1 not have any concern about what to do
2 overnight, we will not be here.

3 The other is that if you desire, if
4 some jurors, any jurors feel it would
5 be better to deliberate until the end of
6 the afternoon and then retire, go home,
7 have the evening meal or whatever you have
8 to do, your family obligations and come
9 back tomorrow, but certainly if we do
10 that as you know now, you may not, you
11 must not talk to any others about this
12 case in any way or do any other independent
13 research on your own.

14 At this time it is my job to first
15 of all give you some general considerations
16 about the law is. We have covered a lot
17 of these things as we have gone on. The
18 attorneys have talked about them and I
19 have talked about them, but I think all
20 of these are important considerations and
21 will bear repeating. I wish that I could
22 and I had the skill to explain to you the
23 law without reading any of it, but we
24 always have the difficulty of about being
25 understandable and I think if you put

1 things in everyday language, then it is
2 understandable and being accurate and the
3 trouble is that in the law there are some
4 times when accuracy sort of outweighs
5 explaining things so that they are under-
6 standable so that I will have to read to
7 you certain portions of the charge and
8 my experience is that it is easier to
9 listen to somebody who is just talking
10 than someone who is reading out of some
11 form and I will try to do that as little
12 as possible, but I know you realize that
13 in some portions here it is necessary to
14 read parts of the charge to you.

15 There are some things here which we
16 have discussed and we will discuss again.
17 In the final analysis your verdict here
18 must be given as to each defendant and as
19 to each count. To aid you, you know,
20 nobody would expect you to remember all
21 the counts and all the defendants, there
22 will be delivered to you in the jury room
23 what we call, - this is fancy language
24 again, - a redacted copy of the indictment.
25 That means as to those counts, for example,

1 Rosa Belle McClendon who is not before
2 you, counts that apply only to her will
3 not be in the copy and I will explain to
4 you in a minute. There are certain counts
5 which I have dismissed which have to do
6 with certain defendants in the case
7 because I found the evidence was not
8 sufficient. Those will not be in the
9 copy, although to understand some parts
10 of the case, I will refer to them in my
11 discussion with you. You will also in
12 addition to the copy of the indictment
13 which has the counts in it which still are
14 in force, that is, they are still charges
15 which you must decide one way or another,
16 that will be given to you along with a
17 verdict sheet, a score sheet, if you will,
18 and as to each count, there is a very
19 short note to indicate what the count is
20 generally about. For example, count one,
21 the state conspiracy, 12-69 to 12-72 and
22 then we have listed the names of those
23 defendants who are before you as far as
24 this count is concerned, Elgin Cook, Mary
25 Jean Askew, Robert Allen Askew and

1 Nathaniel Askew. It is evident when you
2 read count one that there are other names
3 there. Rosa Belle McClendon whose name
4 appears in count one. There is nothing
5 you have to do about Rosa Belle McClendon.
6 You just ignore that, but as to the other
7 defendants, you will mark here your
8 finding, either "Guilty" or "Not guilty"
9 on the score sheet, and then you will
10 pass to count 2.

11 To save some typing labors, and this
12 took awhile to put together, from then on
13 we refer to the defendants by initial,
14 "ECC" equals Elgin C. Cook; "MJA", Mary
15 Jean Askew and so forth, and when we get
16 to Mr. Toliver, he is referred to as "LT"
17 and so I think that as far as identifica-
18 tion, there would be no difficulty and
19 this will be of assistance to you in
20 making an accurate, as well as a fair,
21 verdict.

22 When you go to the jury room, it is
23 your obligation to deliberate. That means
24 that you must listen carefully to the
25 reasoned, conscientious discussion of your

1 fellow jurors about the facts and the
2 evidence and testimony in the case. In
3 order to do this, we will deliver to
4 you the exhibits which have been marked
5 in evidence in the case and those will be
6 available to you during the course of
7 your discussion. Exhibits which are not
8 marked in evidence will not be delivered
9 to you and as we have talked about before,
10 if it is not in evidence or was not
11 discussed in the testimony, then you
12 simply do not guess or speculate as to
13 what was on those particular exhibits.
14 You keep your mind on what you have with
15 you in the testimony in the case and the
16 exhibits which will be delivered to you.

17 It is your job during deliberation
18 not only to give your own views in a
19 reasonable manner, but to listen to the
20 careful, considered views of your fellow
21 jurors. Certainly during this process no
22 element of sympathy should enter into it,
23 no idea about what the sentence of any
24 particular defendant would be because the
25 law provides that it is your function to

1 determine guilt or innocence and after
2 that if your verdict is one of guilty
3 as to any count or any defendant, then
4 it is up to the Court to determine
5 sentence.

6 It is certainly improper for any
7 juror to bring up any matter of bias or
8 any consideration, general consideration,
9 "Well, we have to do something about
10 crime generally". It has been remarked
11 before, but these defendants here are
12 charged with a particular federal crime
13 and their guilt or innocence can only
14 be determined, or their guilt can only
15 be determined if you find beyond a reason-
16 able doubt that all of the essential
17 elements of the crime charged are satis-
18 fied. If you find, for example, that a
19 defendant committed another crime, that
20 a defendant committed a forgery or some
21 violation of state law but you find that
22 the defendant was not guilty of the
23 federal statute charged, then your verdict
24 must be one of acquittal.

25 It is important during your delibera-

1 tion for you to keep in mind that each
2 defendant must be considered separately.
3 As Mr. Cohen expressed in his summation
4 that the phrase "no man is an island"
5 does not apply here. Each man is an
6 island. He must be considered separately.
7 His guilt can only be determined upon
8 what he did or what he said or the acts
9 he committed willfully and intentionally
10 and the mere fact that he happened to
11 live at a particular place or happened to
12 be the son or the daughter or the relation-
13 ship of another defendant, certainly that
14 fact alone, that fact alone cannot warrant
15 a finding of guilty by the jury.

16 In your deliberation as far as the
17 facts, you must certainly, each, I think
18 we certainly can agree generally here,
19 all of us, defense counsel and everyone
20 else, that the facts as to a setting,
21 general setting, and the facts as to each
22 defendant as the Government, taking it in
23 the best light from the Government's
24 viewpoint or the best light from the
25 defendants' viewpoint, that the facts are

1 all a little bit different and it is
2 these differences which you must keep in
3 mind when you discuss the evidence in
4 the case and certainly because you find
5 that a particular defendant did a particu-
6 lar act, does not mean that you can find
7 that another defendant did the act
8 simply because he happened to live at a
9 certain place or simply because he is
10 here in court sitting together with the
11 other defendants.

12 After your deliberation, then you
13 must address your attention to the
14 individual counts and your verdict as to
15 each count and as to each defendant must
16 be by unanimous vote. During the course
17 of your deliberation, at anytime if you
18 have a question that you have for the
19 Court, it should only be done by making a
20 writing, giving the writing to the marshal
21 who will deliver it to me who will then
22 have you come in to court and we will
23 discuss it. If you do come in to court
24 and we are having some kind of a conversa-
25 tion, do not tell me how you stand

1 numerically until you have reached a
2 unanimous verdict. You should not
3 attempt to communicate with anyone else
4 during your deliberation or if there is
5 any break periods. You should not
6 communicate with anyone else about the
7 state of your deliberation or how you
8 feel or anything else about the case.
9 You must keep it entirely to yourself.

10 As we have noted before, as we have
11 said before in this case, an indictment
12 is only a charge. The purpose of an
13 indictment is to tell a man what he is
14 charged with so that he can prepare his
15 defense and so that he will not be charged
16 again for the same offense. The indictment
17 here, as I have already explained, the
18 one that will be sent to you will be in
19 somewhat shortened form. There are a
20 number of counts involved. You will note
21 the indictment delivered to you, count 11
22 is not before you because that has to do
23 with another defendant so that you will
24 find, - that has to do with Rosa Belle
25 McClendon, so there will just be a break

1 in the page, so that is why you do not
2 have that particular count. Count 21
3 charged one of the defendants here in
4 furtherance of a scheme, artifice as set
5 forth in count 14, that one of the
6 defendants mailed or caused to be mailed
7 to the New York State Department of Labor
8 Form LO 406.1 certifying the false and
9 fictitious name of Terry Mithcell. You
10 will find that count will not be before
11 you because I have dismissed it. The
12 LO 406.1, if you will recall, and in
13 describing this form again it is up to
14 you to make the determination of fact and
15 my remarks only are as a guide, but that
16 form is the one, as I recall it, that the
17 person seeking, - I am talking generally, -
18 a benefit, would go to the office and
19 hand the form in to the person there at
20 the desk. The testimony of Mr. Julius
21 was that this form could not be mailed
22 in, that it had to be brought in in
23 person by the person seeking the benefit.
24 I have determined that as a matter of law,
25 that simply carrying these forms in was

1 not a violation of the mail fraud
2 statute in and of itself and as far as
3 that is concerned, and I will read this
4 portion to you, it is one of the essential
5 elements of the crime of mail fraud is
6 that a person either places something in
7 the mail or knowingly causes to be
8 delivered by mail certain matter. A
9 person causes the mail to be used where
10 he does an act with knowledge that the
11 use of the mails will follow in the
12 ordinary course of business or where such
13 use can reasonably be foreseen even though
14 not actually intended. As far as these
15 forms are concerned, I have found as a
16 matter of law that a person could not
17 reasonably foresee that these particular
18 items would be sent through the mail.

19 I find as a matter of law that Form
20 10 406.1 was filed in person by an
21 individual claimant. I am talking
22 general fashion here because the facts
23 as to what any particular person did in
24 this case is certainly up to you, but this
25 is the testimony of Mr. Julius that I am

1 referring to and that any subsequent
2 mailing of these forms by the Department
3 of Labor as part of its intraoffice
4 procedure is not evidence which would
5 support a finding that any particular
6 person caused the mailings of these forms.
7 I have dismissed those counts in the
8 indictment that charge any defendant
9 with mailing or causing to be mailed to
10 the New York State Department of Labor
11 Form LO 406.1.

12 On the other hand, you may consider
13 these forms and whatever the testimony
14 was in the case about what the forms
15 meant, how they were processed by the
16 Department of Labor and what result
17 followed therefrom, in your consideration
18 of the general evidence in the case to
19 determine whether or not there was a
20 scheme to defraud.

21 As far as the indictment we will
22 return from time to time to it, but I
23 think that now it is simply important to
24 know what I have told you, that you will
25 have a score sheet, that there are

1 certain counts not before you and I
2 might also explain to you now that in
3 the conspiracy count, from time to time
4 there were overt acts which referred to
5 these LO 406's and as to those overt acts
6 we have just omitted in our copying. We
7 have omitted those particular counts from
8 your consideration.

9 As the lawyers have all indicated to
10 you, and this is certainly a correct
11 statement of law, that each defendant in
12 this case is presumed innocent until
13 proven guilty beyond a reasonable doubt
14 and this presumption under our view of the
15 law is a very, very important considera-
16 tion. That presumption can only be over-
17 come by competent and relevant evidence,
18 not by suspicion, not by surmise, not by
19 suspicion or conjecture, but only by
20 evidence, and the presumption remains. It
21 remains right now. It cannot be overcome
22 until you ladies and gentlemen finally
23 arrive upon a unanimous verdict as to this
24 count or this defendant and then you
25 announce your verdict in open court and at

1 that time the presumption is overcome
2 and this judgment on your part, again,
3 can only be determined if you find that
4 the Government has proven its case beyond
5 a reasonable doubt.

6 Since this is an important considera-
7 tion, I will read to you some considera-
8 tions about reasonable doubt. The guilt
9 of the accused in any criminal case as to
10 each and every element and with respect
11 to each count of the indictment must be
12 established beyond a reasonable doubt by
13 the Government. You are entitled in making
14 up your mind, you are entitled to take
15 into account all the evidence in the case,
16 the testimony of the witnesses, the
17 evidence, the written evidence before you,
18 in this case the handwriting, the specimens.
19 You have heard testimony about how certain
20 specimens were obtained from individuals;
21 the testimony of the handwriting man, all
22 of the testimony in the case you are
23 entitled to take into consideration in
24 making up your mind.

25 If you have a reasonable doubt at any

1 point with respect to a particular count
2 under consideration, you must acquit a
3 defendant on that count.

4 A reasonable doubt is such doubt as
5 is based upon reason and as appeals to
6 your power of logic. It is a doubt
7 arising out of something tangible in the
8 evidence in the case. It is distinguished
9 from a doubt that might be based upon a
10 notion, a whim or a fancy. If you feel
11 uncertain and not fully convinced that a
12 defendant is guilty of a crime charged
13 in a particular count and if you believe
14 you are acting in a reasonable manner and
15 if you believe a reasonable man or woman
16 in a matter of like importance would
17 hesitate to convict because of such a
18 doubt as you have, that is a reasonable
19 doubt, the benefit of which each defendant
20 is entitled. A reasonable doubt as to
21 any essential element of the crime charged
22 in your mind entitles the defendant to
23 acquittal on the count involved. That is
24 certainly important in a case such as
25 this because you may find here that

1 certain things happened except you may
2 find, "I have no evidence before me as
3 to that count as to mailing". This is
4 a mail fraud count and it is essential
5 that the mails be part of the scheme and
6 that the mails were used as an essential
7 part of the scheme to defraud.

8 The burden of proving a person is
9 guilty beyond a reasonable doubt rests
10 with the Government at all times. It
11 never shifts to the defendant. In order
12 to sustain its burden, the Government
13 must present proof which is sufficiently
14 strong that each juror is convinced of
15 each defendant's guilt beyond a reasonable
16 doubt.

17 In this case, ladies and gentlemen,
18 as far as there has been some testimony
19 about what witness appeared and did not
20 appear. In that regard, the Government
21 is not obliged to bring in each and every
22 witness, every scrap of evidence that they
23 can find to substantiate a charge, but if
24 you find that a witness who was reasonably
25 under the control of the Government has

1 not been called to testify and that
2 testimony is necessary for you to make
3 a judgment in the case, you may infer
4 from that fact that the testimony would
5 not be favorable to the Government of
6 failing to call such a witness, but
7 again, as far as resolving the facts of
8 the case if you find it is not necessary
9 to have that witness present, if in your
10 judgment it would add nothing to the
11 case, then the Government does not have
12 to call each and every witness, but one
13 thing is clear, the defendants are not
14 obliged to call any witnesses.

15 Another thing is clear, that the
16 defendants in this case chose not to take
17 the stand. That is their absolute right.
18 Under our system, they are not obliged
19 to testify in their own behalf in any way.
20 The fact that they did not take the stand
21 may not be held against them at all to
22 their prejudice. It may not be discussed
23 by you at all during your deliberations
24 and as far as your making up your own mind
25 without discussing it, you may not in any

1 way use this as a consideration against
2 them. They have the absolute right not
3 to take the stand in a criminal case.

4 You will determine, certainly, the
5 facts in the case as we have discussed
6 from the testimony of the witnesses.
7 You are the sole judges of the credibility
8 of the witnesses and how much weight you
9 feel their testimony deserves. In making
10 up your mind as to the credibility of
11 any witness, you may take into account
12 the witness' opportunity to observe, for
13 example, how close or far away was a
14 particular witness from a particular
15 event. You will take into account, - you
16 may take into account the witness' interest
17 in the case one way or another, how will
18 the witness be affected by the verdict;
19 will it be beneficial to him, will it be
20 unbeneficial to him, will it just be one
21 of those things that will not make any
22 difference to him. You may take into
23 account any bias or past history between
24 the witness and anyone, defendant or
25 other witness in the case which may

1 consciously or unconsciously color the
2 witness' testimony. You should consider
3 the witness' intelligence, motive, state
4 of mind, demeanor and manner while on
5 the stand. You may consider whether or
6 not you feel the witness appears to have
7 any allegiance to either side of the case;
8 the extent to which at all each witness
9 is either supported or contradicted by
10 the testimony of other witnesses or by
11 the exhibits which are before you.

12 The mere fact that the testimony of
13 a witness is inconsistent or that it does
14 not agree with other testimony in the
15 case does not necessarily mean that you
16 must reject the witness' credibility.
17 You must determine whether the inconsis-
18 tency or discrepancy is the result of
19 innocent miscalculation or inaccurate
20 observation. If you find that any witness
21 has lied with respect to any testimony,
22 you may disregard that portion of the
23 testimony or you may disregard it all.
24 That is up to you.

25 In other words, ladies and gentlemen,

1 in evaluating the testimony of any
2 witnesses in the case, you should follow
3 the same common sense rules that you
4 would bring to bear in making judgments
5 in your own life in matters of importance
6 to yourself.

7 In this case we have certain special
8 problems as far as witnesses are concerned.
9 You will remember Mr. Raspberry who
10 testified that he was convicted a number
11 of times of serious crimes. Certainly
12 you may take that into account in weighing
13 his credibility. You may also take into
14 account and you should take into account
15 the fact that Mr. Raspberry said he did
16 certain things in this instance which
17 were criminal. Testimony of a person
18 like this must be weighed with a special
19 care and only received by a jury with
20 great caution. Mr. Raspberry explained
21 to you that he has pled guilty in the
22 case and that he is awaiting sentence
23 and the judgment about whether or not
24 what the Court might do on sentence was
25 a factor in his mind at all in coloring

1 his testimony one way or another is for
2 you to determine, but these are considera-
3 tions which you should think about when
4 you are weighing the testimony of all the
5 witnesses in the case and as far as the
6 special position that Mr. Raspberry is in
7 in weighing his particular testimony.

8 You are not, ladies and gentlemen,
9 to be influenced at all by the fact that
10 the Government of the United States is
11 a party. The United States Attorney is
12 to be only given as much attention as all
13 of the other lawyers in the case. I have
14 noted that you have been most attentive
15 in listening to the arguments in this
16 complicated and sometimes boring trial,
17 and I know that when you go to the jury
18 room you will continue to address yourselves
19 in a responsible and careful manner.

20 The fact that some Government agents
21 testified in the case, their word is as
22 good as anybody else's and it should be
23 carefully weighed and considered and if
24 you find that it is wanting, it is your
25 judgment to disregard it, that you may do.

1 These things are left to the jury for
2 determination.

3 After you have listened to the
4 testimony and then we talk about it,
5 and I do not know whether it is really
6 necessary to talk about this at length,
7 but there are two kinds of evidence
8 generally which we discuss. One is you
9 may make up your mind in a case based
10 upon direct evidence. That is, the
11 testimony of a witness that he heard or
12 saw a particular thing happen, or you
13 look at a document which reads in a
14 certain fashion, then you may find certain
15 facts from that. In this case we have
16 had the testimony of a handwriting expert
17 who said, and I will talk about opinion, -
18 that is, handwriting testimony in a
19 minute or so, but if you conclude that
20 certain writings were thus and so, you
21 may use this as part of your direct
22 finding.

23 In this case some of the charges
24 relate to conspiracy. As I will tell you
25 when we talk about conspiracy it is not

1 necessary that there be any written
2 document, that there be any writings
3 between individuals, that you may find
4 your results in the case, you may base
5 your verdict in the case based on what
6 we also call circumstantial evidence.
7 That is, you infer from what individuals
8 did or did not do, you can infer from
9 that certain facts based upon circumstances.
10 Again, it is most important that you keep
11 in mind that this is a criminal case and
12 we cannot jump to conclusions because we
13 all know that quite often when we jump to
14 a conclusion that sometimes it is right
15 and sometimes it is wrong, but we must
16 approach the use of circumstantial evidence
17 in a very careful manner.

18 What is circumstantial evidence. In
19 our area, and again the snow, - I do not
20 know why I keep using this example, but
21 we have snow today and I suppose it is as
22 good as any. It is evident that we have
23 had snow on the ground for a few days so
24 that if you have been away from Buffalo
25 for a few days and you return and if the

1 ground had been dry when you left, you
2 would not be able to tell if you were
3 gone for a week what day it snowed from
4 the evidence. You could not tell
5 circumstantially it snowed. If you were
6 gone and it was dry today and you left
7 on an overnight trip and came back
8 tomorrow and then there was snow on the
9 ground; then from that you could make a
10 responsible reasoned judgment that it
11 snowed overnight.

12 In other words, in all of this
13 business you take facts which you find
14 are proven in the evidence either from
15 the exhibits or from the testimony and
16 then you reach certain conclusions based
17 upon common sense and good reasoning.
18 If in doing this you can come to two
19 conclusions, one conclusion pointing to
20 innocence and the other pointing to guilt,
21 in a criminal case it is your responsibility
22 to take the inference that points to
23 innocence. This is, of course, where two
24 conclusions can be derived from the same
25 facts. If you find that only one conclusion

1 can be drawn from the facts, then, of
2 course, you may simply take the one
3 conclusion.

4 Ladies and gentlemen, I will turn
5 to a discussion of the particular charges
6 which are placed in this case. Generally
7 speaking, the defendants are charged in
8 different combinations with devising a
9 scheme and artifice to obtain moneys
10 from the New York State Unemployment
11 Insurance Fund by making false claims
12 for unemployment insurance benefits in
13 violation of Title 18, United States
14 Code, Section 1341, and conspiring to
15 commit mail fraud in violation of that
16 section and in violation of the conspiracy
17 section, Section 371.

18 Section 1341 of the Criminal Code
19 provides in pertinent part as follows:
20 Whoever having devised or in intending
21 to devise any scheme or artifice to defraud
22 or for obtaining money or property by
23 means of false or fraudulent pretenses,
24 representations or promises for the purpose
25 of executing such scheme or artifice or

1 attempting so to do places in any post
2 office or authorized depository for mail
3 matter any matter or thing whatever to
4 be sent or delivered by the post office
5 department and/or the United States Postal
6 Service or takes or receives therefrom
7 any such matter or thing or knowingly
8 causes to be delivered any such matter
9 or thing or knowingly causes to be
10 delivered by mail according to the direc-
11 tion thereon any such matter or thing
12 shall be guilty of an offense against the
13 laws of the United States.

14 There are certain words which should
15 be defined. The words "scheme and
16 artifice" as used in this statute just
17 read include any plan or course of action
18 intended to deceive others and to obtain
19 by false or fraudulent pretenses,
20 representations or promises money or
21 property from person so deceived. A
22 statement or representation is false or
23 fraudulent within the meaning of this
24 statute if known to be untrue or made with
25 reckless indifference as to its truth or

1 falsity and made or causes to be made
2 with the intent to deceive.

3 A false or fraudulent representation
4 may be made by statements of half truths
5 or the concealment of material facts, as
6 well as by affirmative statements or acts.

7 In order to prove its case, the
8 Government must prove beyond a reasonable
9 doubt three essential elements of the
10 crime charged. This particular charge
11 relates to what we call the substantive
12 offenses. That is, not the conspiracy
13 counts, but all the other counts which
14 will be left to you for your consideration.
15 The Government must prove beyond a reason-
16 able doubt, first of all, that the act or
17 acts having devised or having intended, -
18 the defendants having devised or having
19 intended to devise a scheme or artifice
20 to defraud, or an attempt to defraud the
21 New York State Department of Labor Unem-
22 ployment Insurance Fund of Unemployment
23 Insurance Benefits by means of filing
24 false and fraudulent claims for benefits
25 as charged, and secondly, the acts or act

1 of placing or causing to be placed in an
2 authorized depository for mail matter
3 anything intended to be sent or delivered
4 by the post office department and/ or
5 the United States Postal Service as
6 charged, and thirdly, the act or acts of
7 so using United States mails willfully
8 and with a specific intent to carry out
9 some essential step in the execution of
10 said scheme or artifice to defraud or
11 attempt to do so as charged.

12 It is important, ladies and gentlemen,
13 in these considerations that you look at
14 each count and determine from each count
15 whether or not the activities charged in
16 that count are proven beyond a reasonable
17 doubt by the Government within the frame-
18 work of the elements, the essential
19 elements which I have charged to you.

20 When it is said the act must be done
21 willfully, that means that the defendant,
22 you must find from the evidence, did it
23 intentionally and not through some mistake
24 or mere carelessness or negligence; that
25 the defendant had the specific intent

1 when he started this, if you find that
2 he did start this in operation or
3 delivered a certain paper, that he did it
4 with a specific intent to violate the
5 statute and to defraud.

6 It is not necessary to show that the
7 defendant used the mails himself if he
8 does something by reason of which the use
9 of the mails will follow in the ordinary
10 course of business or such use can be
11 reasonably foreseen. In this case here
12 the Government argues that certain forms
13 were sent to the, or delivered to the
14 Department of Labor; that it could be
15 reasonably foreseen, for example, there
16 was some evidence that some forms were
17 mailed, it could be reasonably foreseen,
18 certainly, that ultimately if you find in
19 the evidence that all of the other factors
20 are found, that if checks were going to
21 be delivered, they would be delivered by
22 mail.

23 Normally the defendant may not avoid
24 liability by the claim that he himself
25 did not use the mails. That is, causing

1 to be placed. If you file certain forms,
2 for example, with an insurance company
3 and you carry them in in person, but you
4 can reasonably foresee that the insurance
5 company will use the mails, that would
6 be sufficient to satisfy the statute.

7 The test is whether the use of the mails
8 contributes in some essential way to the
9 fraudulent scheme. To sustain conviction
10 for use of mails to carry on an unlawful
11 activity, it is sufficient to show that
12 the defendants knowingly took some
13 affirmative action which caused the mails
14 to be used.

15 I think, ladies and gentlemen, I
16 should modify that statement and say to
17 sustain convictions for use of mails to
18 carry on an unlawful activity, it is
19 necessary to show that the defendants
20 knowingly took some affirmative action
21 which caused the mails to be used.

22 I think before we go on to talk about
23 conspiracy, we ought to talk about one
24 or two of the substantive counts. For
25 example, count 2 charges, and I am going

1 to talk to you about this in summary
2 fashion, that between December 1969 and
3 December 1972 that certain defendants
4 devised and intended to devise a scheme
5 or artifice to defraud the New York State
6 Unemployment Insurance Fund of unemployment
7 insurance benefits by filing false and
8 fraudulent claims for benefits using
9 false or fictitious names and modified
10 names claiming to have worked for the
11 Cook and Green Car Wash, thereby obtaining
12 moneys from the New York State Unemployment
13 Insurance Fund. It was part of the scheme
14 that the defendants would claim to have
15 worked for the Cook and Green Car Wash.
16 Secondly, it was part of the scheme that
17 the defendant Elgin Cook would verify
18 by mailing to the New York State Department
19 of Labor Form LO 12.11. This is a form
20 different from the one we discussed before.
21 This is the employer's form which you may
22 find, you know, the argument is this was
23 mailed, verifying the defendants used
24 various false and fictitious names worked
25 for him. It was part of the scheme that

1 defendant Elgin Cook would place and
2 cause to be placed in an authorized
3 depository for mail such unemployment
4 verification form. It was part of the
5 scheme that defendants would cause to be
6 placed checks drawn on the New York State
7 Unemployment Insurance Fund mailed to
8 them under real or fictitious names; that
9 for purpose of executing the aforesaid
10 scheme, that on a particular day the
11 defendant mailed Form LO 12.11 to the New
12 York State Department of Labor verifying
13 that Kathryn Lee Willis was employed by
14 him.

15 In relating the general charge to
16 this particular count, it is evident that
17 the Government must prove beyond a
18 reasonable doubt what is charged in this
19 particular count, that false claims were
20 made in regard to Cook and Green Car Wash.
21 I am not talking about the other companies
22 that were involved here. This has to do
23 with Cook and Green Car Wash and you must
24 find that certain events occurred within
25 the time period involved here. You must

1 find beyond a reasonable doubt that Mr.
2 Cook verified by mailing to the New York
3 State Department of Labor this particular
4 form.

5 You can find that, of course, not
6 that the Government, and this again, we
7 get back to circumstantial evidence. The
8 Government does not have to show that they
9 have a photograph of somebody mailing a
10 particular letter, but if the agency
11 received a particular document in the
12 regular course of business and that their
13 records would indicate it was received
14 by mail, that may lead you circumstantially
15 to the conclusion that it was received
16 and it was received by mail. Also that
17 Sub (c) it was part of the scheme that
18 the defendant Cook placed or caused to be
19 placed in a depository for mail matter
20 such unemployment verification forms.

21 Again it does not make any difference
22 whether he mailed it himself or whether
23 he had someone else mail it for him, a
24 friend. It really does not matter as
25 long as you find from all the evidence

1 in the case, the handwriting, the
2 documents, the testimony, that the was
3 the fellow that got it going, but it is
4 an essential part of the Government's
5 case that they prove that beyond a
6 reasonable doubt. Also part (e) that as
7 part of the scheme that defendants would
8 cause to be placed in authorized depository
9 for mail checks drawn on the New York
10 State Unemployment Insurance Fund. Again,
11 this can be shown by the evidence in the
12 case. This particular count the Government
13 has given an example and they discuss
14 the mailing on a particular day. You must
15 find that this particular mailing was in
16 fact made regarding this person by the
17 name of Kathryn Lee Willis and on or
18 about January 30, 1970 that certain
19 information came from Mr. Cook by way of
20 Form LO 12.11.

21 There are shorter counts in which
22 there is reference, for example, in count
23 5, this refers to count 2 and as far as
24 that is concerned in your resolution of
25 count 5 you must find that the elements

1 of count 2 are satisfied. In addition,
2 count 5 charges that between February 14,
3 1972 and May 1, 1972 the defendant
4 Robert Askew mailed to the New York State
5 Unemployment Insurance Fund a statement
6 certifying he was still unemployed and
7 that between February 24, 1972 and May 5,
8 1972 that he received by the mails various
9 checks from the State of New York. Before
10 you could find Mr. Askew guilty of the
11 charge placed in count 5, you must find
12 that the elements in count 2 are satis-
13 fied and in addition that Mr. Askew
14 willfully mailed the document described
15 in this particular count, count 5, and
16 that in addition, he received by the
17 mails checks from the State of New York,
18 Albany, New York, in violation of Title
19 18, United States Code, Sections 1341 and
20 1342.

21 We might as well talk about that
22 for now, maybe for just a little change.
23 What do we mean by Section 2. In this
24 case you will find in various counts that
25 individuals are charged under not only

1 Section 1341, but also Section 2 of
2 Title 18. This is the section which is
3 commonly known as aiding and abetting
4 another person to commit a crime. Under
5 the law any person who knowingly or
6 intentionally aids, abets, counsels,
7 commands, induces or procures the commis-
8 sion of fraud through the use of the
9 mails is a party to the offense and may
10 be found guilty thereof. It is not
11 necessary that the aider or abettor know
12 the method of operation of the person
13 or persons whom he is aiding or abetting
14 but it is necessary that he or she in
15 some manner knowingly associate himself
16 or herself with the commission of the
17 fraud and knowingly and willfully partici-
18 pated in the mail fraud with the intention
19 of assisting in its success. Anyone who
20 normally causes an act or acts to be
21 done which if directly performed by him
22 would be an offense under the mail fraud
23 statute is guilty of an offense under
24 that statute and, of course, any person
25 who himself does the act necessary with

1 the intent required is guilty of an
2 offense under the mail fraud statute
3 and certainly, as I have explained to
4 you before, in order to find a person
5 guilty of being an aider and abettor,
6 you must find the Government has proven
7 the essential elements to your satisfac-
8 tion beyond reasonable doubt.

9 It is not necessary, for example,
10 if you find that Mr. Askew did certain
11 acts, it is not necessary that he know
12 everything that Mr. Cook did if you find
13 that Cook did certain things, but it is
14 necessary that he want to aid and assist
15 in the completion of the act and he does
16 something which is necessary for its
17 completion.

18 I will return to some more general
19 considerations as far as the indictment
20 is concerned. In addition to being
21 charged with a general scheme to defraud
22 the New York State Unemployment Insurance
23 Fund by the filing of false and fraudu-
24 lent claims against employers known as
25 Cook and Green Car Wash, Cook Auto Care,

1 Steel City Collision, Bee Gee Arco Service
2 Station, Almassi's Tavern, Charlie's
3 Sunoco Service and Dickson's Service
4 you will find when you look at the indict-
5 ment and you look at the score sheet
6 that these particular companies are
7 referred to in particular counts in the
8 indictment and particular counts on the
9 score sheet which should certainly
10 coincide. The defendants are also charged
11 individually with the doing of certain
12 acts utilizing the mails in furtherance
13 of the scheme or device to defraud the
14 New York State Unemployment Insurance
15 Fund.

16 For example, in count 15 of the
17 indictment, the defendant Elgin C. Cook
18 is charged with mailing or causing to
19 be mailed to New York State Department
20 of Labor Form LO 12.11 verifying that one
21 Johnnie L. Jones was employed by him from
22 January 16, 1971 to January 16, 1972,
23 all in furtherance of a scheme, artifice,
24 device to defraud by the filing of false
25 claims against Cook Auto Care and that the

1 act aided and abetted the other defendants
2 in carrying forth the scheme in violation
3 of Title 18, United States Code, Section 2.

4 As to each one of these sections,
5 again I will repeat, like 15 where a
6 part of the scheme is charged, you must
7 find that the elements that are set forth
8 in count 14 are satisfied and count 14 is
9 referred to in count 15, as well as the
10 particular item charged in count 15 and
11 this is so, these particular counts,
12 separate counts may be charged because
13 under the mail fraud statutes each
14 separate use of the mails in furtherance
15 of a scheme to defraud may constitute a
16 separate offense. The Government may go
17 ahead and charge each one of these
18 separate mailings if they desire or they
19 are not required to, but if they do
20 charge them, then you must take up each
21 one in determining whether or not the
22 Government has proven guilt beyond a
23 reasonable doubt.

24 A scheme to defraud under the mail
25 fraud statute means some plan to procure

1 money or property by means of false
2 pretenses or representations calculated
3 to deceive and the Government must prove
4 that the defendants participated in such
5 plan and that such representations were
6 made by them or their agents knowing they
7 were false and with intent to defraud.
8 It is not necessary, however, that the
9 Government prove all of the pretenses,
10 representations and acts charged in the
11 indictment. It is essential only that
12 one or more of them be proved to show the
13 existence of the scheme.

14 In this case we have had much talk,
15 ladies and gentlemen, about the handwriting
16 analysis here. In that connection, keep
17 the following in mind: Where the genuine-
18 ness of handwriting is in issue, any
19 proved or admitted handwriting of a
20 person may be received in evidence to be
21 used as a specimen for a comparison with
22 the handwriting in dispute. With respect
23 to the defendants Robert Allen Askew and
24 Nathaniel Askew, they have admitted that
25 the signatures on the various documents

1 and endorsements on the reverse of many
2 checks were written by them so that the
3 handwriting analysis in this case here
4 by Mr. Sang does not apply to the
5 defendants Robert Askew or Nathaniel
6 Askew at all.

7 However, with respect to the remain-
8 ing defendants, Mr. Sang claims special
9 qualification as an expert on handwriting
10 and has testified as to certain handwriting
11 in dispute. He has testified, you may
12 find, and again it is up to you, to your
13 recollection, you may find that he has
14 testified that he has compared the speci-
15 men writings of each of the defendants
16 referred to and has found that whoever
17 wrote the specimen writing, wrote the
18 handprinting or signatures on certain
19 forms and endorsements on various checks.
20 That is the argument of the Government.
21 As I have explained again and again, it
22 is for you to make the ultimate determina-
23 tion. A person who holds himself out to
24 be a handwriting expert may state his
25 opinion as to whether documents or

1 signatures in evidence were written by
2 the same person and whether they are
3 genuine, disguised or altered by comparing
4 the handwriting in dispute with the proven
5 specimen. You have the right and the
6 duty to determine the weight to be given
7 to such testimony as that given by Mr.
8 Sang.

9 Generally the rules of evidence do
10 not permit witnesses to testify as to
11 opinions or conclusions. Ordinarily a
12 person, - the other witnesses in the case
13 just come in here and testify in open
14 court, "Well, I believe, my opinion is
15 this is so or that is so as to handwriting"
16 but there is an exception to the rule as
17 to those whom we call expert witnesses.
18 These are witnesses who by education and
19 experience have become knowledgeable in
20 some art, science, profession or calling
21 and they may state opinion as to relevant
22 and material matter in which they profess
23 to be expert and may also state their
24 reasons for the opinion. You should con-
25 sider this testimony received in evidence

1 in the case and give it such weight as
2 you think it deserves.

3 First of all, you should decide
4 whether or not the witness has sufficient
5 education and experience in his field to
6 state an opinion. Secondly, you sho
7 examine the reasons given for the conclu-
8 sions reached by the expert and if you
9 find that they are not sound, then you
10 may disregard the expert's testimony entire-
11 ly or in part. If you find that any facts
12 which Mr. Sang referred to were not borne
13 out by the other evidence in the case,
14 certainly then you should disregard that
15 particular part of his testimony.

16 In other words, ladies and gentlemen,
17 it is up to your good common sense. There
18 is a further exception when I say the
19 witnesses may not express expert opinion,
20 but since you are the ultimate finders of
21 the fact, you have every right to look at
22 the documents to make your comparison,
23 and, of course, you should consider the
24 testimony in the case, but in your judgment
25 if you feel that Mr. Sang was incorrect as

1 to any of his opinions expressed as to
2 any of these documents, as to the hand-
3 printing or as to the handwriting, then
4 you may disregard any of it. In other
5 words, ladies and gentlemen, you are the
6 ultimate finders of the fact, not the
7 witnesses. The witnesses, - you take all
8 of the witnesses' testimony and you match
9 it up with all of the documents and from
10 that you come to the conclusions which
11 are decisive in a case like this.

12 Mr. Sang prepared some charts by
13 blowing up photographically certain
14 documents and portions of documents. These
15 are received for the purpose of explaining
16 how he arrived at his findings of fact
17 and his conclusion as to who was the
18 author of various questioned documents.
19 These charts are not of themselves evidence
20 or proof of any fact. If you find that
21 the charts or summaries do not correctly
22 reflect facts or figures shown by the
23 evidence in the case, you should disregard
24 them. You may find for one reason or
25 another that the conclusion reached by

1 Mr. Sang was not warranted. If that is
2 so, then you say, "I am going to accept
3 this but not accept that", that is your
4 judgment and that is the end of it.

5 These charts that he made or blowups are
6 being delivered to you as an aid only
7 to your ultimate judgment. You may use
8 them or not use them, as you see fit.

9 We will now turn to what are known
10 as the conspiracy counts in the indictment.
11 Generally the conspiracy is different
12 from a substantive charge in that conspiracy
13 charges the planning of a crime. The
14 substantive charge charges the doing of
15 it. The planning of it may be criminal
16 if certain elements are also satisfied
17 and generally speaking that a person may
18 be found guilty of a conspiracy, or persons,
19 even if they are not successful in the
20 ultimate object which they have as part
21 of their scheme, so that in conspiracy,
22 in addressing the conspiracy counts, there
23 are considerations different from the
24 considerations which you will apply in
25 deciding the issues in the other counts.

1 The conspiracy counts are set forth
2 in count 1, 13, 36, 41, 48 and 54 and you
3 will readily find them marked on your
4 verdict sheet here.

5 In count 1 the conspiracy charged
6 is one to defraud the New York State
7 Unemployment Insurance Fund by making
8 false and fraudulent claims of employment
9 through the Cook and Green Car Wash.

10 Count 13 the defendants named in that
11 count are charged with obtaining benefits
12 against Cook Auto Care. In count 36 the
13 defendants Elgin Cook and Louis Toliver
14 are charged with obtaining false benefits
15 against Steel City Collision.

16 In count 41 this relates to Bee Gee
17 Arco Service.

18 Count 48 relates to Almassi's Tavern.

19 Count 54, Charlie's Sunoco Service.

20 Each one of these as I have explained
21 to you before, must be taken up separately.
22 In order to convict the defendants on
23 these conspiracy counts, the Government
24 must prove to your satisfaction beyond a
25 reasonable doubt each of the following

1 three elements:

2 The existence of a conspiracy for
3 the purpose of willfully, knowingly and
4 intentionally defrauding the New York
5 State Department of Labor of unemployment
6 insurance benefits by the filing of
7 false claims and the obtaining of benefits
8 thereby; that the defendants joined the
9 conspiracy with knowledge of its unlawful
10 purpose. I should say, ladies and
11 gentlemen, that the defendant, because
12 each defendant must be taken up separately,-
13 joined the conspiracy with knowledge of
14 its unlawful purpose.

15 Thirdly, the Government must prove
16 that some one of the conspirators charged
17 in that particular count committed at
18 least one overt act in furtherance of the
19 conspiracy.

20 What is a conspiracy. A conspiracy
21 is a combination or agreement among two
22 or more people to violate the law as
23 charged in the particular count of the
24 indictment. In other words, an agreement
25 to devise a scheme to obtain moneys from

1 the New York State Unemployment Insurance
2 Fund by filing false claims for unemploy-
3 ment insurance benefits as related in the
4 particular count at issue. A conspiracy
5 is a partnership in a criminal purpose.
6 It does not mean that two or more persons
7 must meet and sign a formal partnership
8 agreement or that they must sit down and
9 agree in so many words on what their
10 unlawful plan or scheme is or how it is
11 to be carried out.

12 The first element is satisfied if
13 you find beyond a reasonable doubt that
14 any two or more people in any way inten-
15 tionally combined or agreed to a common
16 plan knowingly and intentionally and in
17 this case to defraud the New York State
18 Unemployment Insurance Fund. A conspiracy
19 may be found to exist although the purpose
20 is never accomplished. Proof, however,
21 that the conspiracy was accomplished may
22 be most persuasive evidence of the conspir-
23 acy itself and it may not be because, of
24 course, some person can commit on his own
25 a substantive crime, but not be guilty of

1 the conspiracy because he did not conspire
2 with another in the unlawful agreement
3 or two people or three people may, for
4 example, rob a bank, but from the evidence
5 in the case you may find that the robbery
6 occurred and there may not be any evidence
7 in the case that they ever made any
8 agreement. It might have been a spur of
9 the moment thing or simply the evidence
10 is lacking and, of course, if the evidence
11 is lacking, the Government has the burden
12 of proving beyond a reasonable doubt the
13 evidence in the case and you cannot infer
14 in a conspiracy charge that simply because
15 some acts are done that the persons
16 involved had some kind of plan to accomplish
17 it. You must find that from the evidence
18 in the case.

19 The second element which the Govern-
20 ment is required to prove beyond a reason-
21 able doubt is that each defendant joined
22 the conspiracy with knowledge of its
23 unlawful purpose. When I say "joined the
24 conspiracy", I do not mean that the
25 defendant has to apply for membership.

1 Before one can be found to be a conspirator,
2 however, he must know about the conspiracy
3 and of its unlawful purpose and voluntarily
4 and knowingly join in the criminal venture
5 with an intent to combine with others
6 in violation of the law. He must knowing-
7 ly promote the scheme or have some kind
8 of stake in its outcome. One may become
9 a member of a conspiracy without knowing
10 all of the details or all of the operations
11 of it. A defendant may know only one
12 other member of a conspiracy and yet if
13 he knowingly cooperates to further the
14 illegal purpose of the conspiracy with
15 knowledge that others have combined to
16 violate the law, he becomes a member
17 although his own role may be insignificant.
18 If you find that a defendant joins a
19 conspiracy, then he is bound by what
20 others say and do to promote and further
21 the venture even though he may not be
22 present and participate in what they do.

23 The third element of the crime of
24 conspiracy is the commission by a con-
25 spirator of at least one overt act in

1 furtherance of the objects of the
2 conspiracy. An overt act means an act
3 by any member of the conspiracy in an
4 effort to accomplish some purpose of it.
5 The reason the law of conspiracy requires
6 an overt act is because a person might
7 agree to commit a crime and then change
8 his mind. Therefore, before a defendant
9 can be convicted of a crime of conspiracy,
10 one or more of the conspirators must have
11 taken at least one step or performed one
12 single act which moved toward carrying
13 out the unlawful intent to commit the
14 crime. If those acts were performed by
15 any member of the conspiracy, whether or
16 not it is a defendant on trial, and those
17 acts were performed during the existence
18 of the conspiracy and in furtherance of
19 its purpose, then those acts are sufficient
20 to satisfy the third element.

21 The Government is not required, -
22 you will find in these counts that there
23 are a number of overt acts charged. The
24 Government is not required to prove each
25 and every one of the overt acts charged.

1 The Government is only required to prove
2 beyond a reasonable doubt that at least
3 one of the overt acts charged was commit-
4 ted in furtherance of the conspiracy.
5 It may be, and I am sure this is the case,
6 that perhaps some of the overt acts
7 charged here are innocent. It may be
8 like driving a car or making a phone call
9 or walking across the street or meeting
10 with a person on a particular day, but
11 even if the act in and of itself is
12 innocent, if you find beyond a reasonable
13 doubt that it was done to move the
14 conspiracy along, then the overt act
15 requirement is satisfied, but you cannot
16 start from the end here. You cannot find,
17 let us say you found in the conspiracy
18 charged that all of the overt acts were
19 proven beyond a reasonable doubt but
20 nevertheless you find there was no unlaw-
21 ful agreement as charged in the indictment,
22 then there is no conspiracy because the
23 essential part of a conspiracy is the
24 unlawful agreement to violate the law.
25 To make sure that individuals are not

1 convicted because of mere talk or
2 discussion, you know, we all may sit
3 down over a Coca Cola and have some
4 crazy discussion about, "Gee, I would
5 like to do this or do that", but none of
6 us could be convicted of a conspiracy
7 unless one of the persons did some act
8 to carry that unlawful conspiratorial
9 agreement forward, and it is most impor-
10 tant that you keep both of these facts
11 in mind that you cannot have one without
12 the other, and it is most important that
13 the Government prove the conspiracy
14 beyond a reasonable doubt as I have
15 explained it to you before you can bring
16 in a verdict of guilty.

17 In this case we have had certain
18 stipulations and as I have explained to
19 you before, if the attorneys have stipu-
20 lated, and here with defendant present
21 that certain facts are so, you may accept
22 that just as you would as if a person
23 took the stand and testified.

24 In this case for completeness you
25 will find, I believe, that in certain, -

1 yes, in count 1, for example, the Govern-
2 ment charges a violation of Section 1341
3 and 1342. That is charged as part of the
4 conspiracy. 1342 provides that whoever
5 for the purpose of conducting or carrying
6 on by means of the postal service any
7 scheme or device mentioned in Section 31
8 using any fictitious, false or assumed
9 name or address or name other than his
10 own proper name or takes or receives
11 from any post office or authorized
12 depository any letter addressed, and so
13 forth, addressed to such fictitious,
14 false or assumed title shall be guilty of
15 an offense against the United States.

16 It is one of the means which the
17 Government has charged here that were
18 used to carry on the purpose. As an
19 example, the essential part of the charge
20 is the scheme to knowingly defraud or
21 devise a scheme to obtain moneys from the
22 New York State Unemployment Insurance
23 Fund by placing in a depository or causing
24 to be placed mail matter, certain claim
25 for benefit forms, verification of employ-

1 rent forms, certification forms to be
2 sent or delivered to the post office
3 department or causing to be delivered by
4 mail according to direction thereon. It
5 is not necessary the Government prove
6 in each and every case that a person used
7 false or fictitious names, but it is one
8 of the means which the Government has
9 charged is part of, one of the devices.
10 In your consideration here there may be
11 some materials which I have discussed with
12 you earlier in the case and you should
13 consider that as part of the charge as
14 well.

15 At this time, ladies and gentlemen,
16 I will ask you to step into the corridor
17 briefly with the marshal so that I can
18 listen to any exceptions to the charge by
19 the attorneys or consider any further
20 requests which they may have on the
21 charge which I have given. If you will
22 step out, we will have you right back.

23
24 (Jury escorted from the courtroom.)
25

1 THE COURT:

Mr. Williams.

2 MR. WILLIAMS:

I have no exceptions to the charge.

3

On a request, the only point I want to
4 raise, I am not quite sure, but I thought
5 the Court was going to cover the fact
6 that despite the fact that there are
7 certain counts dismissed charging cause
8 to be mailed or mailing of 406's, that
9 they must still consider this as part of
10 the evidence relating to other charges.
11 With respect to the counts involved, I
12 don't recall whether you did.

13 THE COURT:

I am quite sure I did. I know I
14 did, Mr. Williams.

15 MR. WILLIAMS:

Then I have no exceptions.

16 MR. JAY:

Your Honor, the only comment I have
17 is when you dealt with that particular
18 form in your charge, I don't think you
19 were clear as to what exactly it was. I
20 think you described it as being the
21 original claim for benefits form that the
22 person brings in rather than it being
23 the IBM type card with which they would
24 come back the second week and the four
25 questions are asked, "Have you worked this

1 week", and then it is sent out.

2 THE COURT:

Can you give me one of those, Mr.
3 Jay?

4 MR. JAY:

The pay order type, rather than the
5 original.

6 THE COURT:

This is not the original claim
7 filed. Mr. Lamantia.

8 MR. LAMANTIA:

9 Your Honor, I have an exception to
10 the Court's charge on the elements of
11 conspiracy which I believe was taken from
12 the bottom of Page 8 and the top of
13 Page 9 of the Government's request to
14 charge. The three elements of the conspira-
15 cy is so written and so charged by the
16 Court to the jury, there is nothing that
17 mentions the use of the mails in further-
18 ance of the scheme and as set forth there
19 I don't believe it sets out a conspiracy
20 under federal law. Perhaps under state
21 law, but all is charged is the existence
22 of a conspiracy for defrauding the New York
23 State Department of Labor of unemployment
24 insurance benefits which aren't federal
25 moneys, by the filing of false claims and
obtaining benefits thereby if the defendants

1 joined in the conspiracy with knowledge
2 of its purpose and that some one of the
3 conspirators committed at least one overt
4 act in furtherance of the objects of the
5 conspiracy. Nothing which relates to
6 the use of the mails which would make it
7 a conspiracy to violate any federal law.

8 THE COURT:

I will cover that, Mr. Lamantia.

9 MR. COHEN:

10 If the Court please, along the same
11 lines and in reference to the same charge,
12 I will take exception and ask the Court
13 possibly to clarify the fact that all
14 three elements, - this is both request
15 Number 3 on Page 2 and the top of Page 9,
16 each of the following three elements, the
17 Court did indicate in talking about overt
18 acts indicating that only one must be
19 shown and I think there might be some
20 confusion between overt acts and elements
21 of the crime and I would like the Court
22 to charge the jury that all elements must
23 be established, not just one.

24 THE COURT:

25 All right. I thought I covered that
but I will do it again to make sure. Any-
one else? Nothing further. All right,

1 have the jury come back, please.

2
3 (Jury returns to the courtroom.)

4
5 THE COURT:

6 Ladies and gentlemen, to make sure
7 that there is no question about this at
8 all and I believe that in my charge that
9 it was clear, but I want to be sure about
10 it, in the conspiracy charge as well as
11 the substantive charge we kept talking
12 about the use of the mails. Certainly as
13 far as any conspiracy charge the Govern-
14 ment is obliged to show that the mails
15 were used to carry out the conspiracy
16 and that it was part of the scheme that
17 the filing of certain material could
18 reasonably result and the conspirators
19 knew that it reasonably could result in
20 the use of the mails and this is, essen-
21 tially, the Government must prove this,
22 that if you find simply that there was a
23 conspiracy to file false claims but that
24 the conspirators could not look ahead and
25 reasonably know that the mails would be
used in some essential step in the scheme,

1 then, of course, the Government has failed
2 in its proof on the proving of the
3 conspiracy.

4 I have referred to Forms LO 406.1.
5 These are in evidence. The number is
6 down at the bottom and it is in very small
7 letters. Examples are Government Exhibits
8 4, 6, 8, 10 and so forth. These were not
9 the first application which an applicant
10 would make, but these were the IBM type
11 forms which the applicant would sign when
12 he or she or a person, I suppose nowadays,
13 would appear at the unemployment office
14 to certify the material which is stated
15 on here. In other words, "I did not work
16 in employment or semi-employment and was
17 ready and willing to work", so that it
18 should be kept in mind what we are talking
19 about here and these are the forms, and
20 as far as the particular counts that
21 relate only to these forms I have dismissed
22 because I find that no one could know
23 that these forms in and of themselves
24 would be mailed. You may consider them,
25 however, in your discussions about the

1 scheme generally to obtain money from
2 the unemployment office.

3 On the conspiracy count, certainly,
4 and I did my best to explain this, that
5 there is definitely a difference between
6 an overt act and the essential elements.
7 We have to find in the conspiracy that
8 there is an agreement as explained in
9 that particular count, as charged in the
10 count; that it was entered into unlawfully
11 and willfully by the participants and that
12 after that, you must find that one of the
13 overt acts charged was committed by one
14 of them.

15 Mr. Lamantia or any others, anything
16 else here?

17 MR. LAMANTIA:

No, your Honor.

18 THE COURT:

19 All right. Ladies and gentlemen,
20 we will do this; the case will now be
21 submitted to you. Mr. White, would you
22 have the marshals step forward and be
23 sworn.

24 (Two Deputy United States Marshals
25 sworn as custodians of the jury.)

1 PROCEEDINGS: December 17, 1975, 2:15 p.m.

2 APPEARANCES: As before noted.

3 (All defendants present.)

4 (Jury present.)

5
6 MR. WILLIAMS: I call William Julius.

7
8 W I L L I A M J U L I U S (200 Franklin Street, Buffalo,
9 New York), a witness called by and in behalf of the Government,
10 having been first duly sworn, was examined and testified as
11 follows:

12
13 DIRECT EXAMINATION BY MR. WILLIAMS:

14 Q Mr. Julius, you are employed by whom, sir?

15 A Department of Labor.

16 Q And what is your position with the Department of Labor?

17 A I am an unemployment insurance investigator.

18 Q How long have you been an investigator?

19 A Six years, approximately.

20 Q All right, sir, and as an investigator with the Department
21 of Labor, can you tell us what some of your duties are?

22 A Well, I would look into a claim if there was any question
23 as to whether they were eligible for benefits or entitled
24 to benefits.

25 Q You are talking about someone who would file a claim for

1 is no disqualifying information, he would be entitled to
2 a full week's benefits, but first he has to present that
3 book to a claims taker to show that he was not employed
4 or unable to work for any reason. The claims taker then
5 asks four questions, "Did you work at all last week, did
6 you look for work, were you able to work, did you refuse
7 any work, were you able to work all week", and if the
8 questions are answered properly, he would be able to
9 certify for a check, He would then sign a pay order at
10 the desk.

11 Q All right. Is that what you refer to as an LO 406?

12 A That's right.

13 Q And what becomes of that pay order, that LO 406?

14 A That pay order for the day is batched together with other
15 people who have signed during that same course of the day
16 and they are all mailed to Albany and they are put in a
17 computer and scanned for any disqualifying information and
18 if there is no disqualifying information a check is then
19 issued to the individual who signed that card.

20 Q At an address indicated?

21 A The check is mailed from Albany to the individual's address
22 that he indicated on the form when he filed his application
23 or if he brought to the attention of the local office that
24 he changed his address.

25 Q All right, sir. How is that check then sent to the individual

1 A It is sent from Albany through the mail to his address.

2 Q All right. Mr. Julius, let me show you what is marked
3 as Government Exhibit Number 1 for identification, sir,
4 and I ask you if you can tell me what that is?

5 A This is a folder that we would keep in our office at
6 200 Franklin Street.

7 Q And what is that folder, sir?

8 A It is a folder on Kathryn Willis, Social Security Number
9 077-46-2610 at 83 Brunswick, Buffalo, New York.

10 Q And what does that file contain?

11 A It would contain, - in our office it would contain anything
12 that was pertinent to this person's claim. It would
13 include the forms to be filled out in the local office.
14 It could include any forms we would send - -

15 THE COURT: Can we have what it does contain
16 rather than what it could?

17
18 BY MR. WILLIAMS:

19 Q All right. With respect to that particular file,
20 Government Exhibit Number 1, what does that contain?

21 A Well, the first thing here is what we call a benefit
22 ledger transcript indicating a check - -

23 MR. JAY: Excuse me, sir. I am going to
24 object to any testimony about what
25 this file contains. It is not in evidence.

1 A Can I explain?

2 Q Yes.

3 A All right. This form, our normal procedures are to have
4 it mailed back. If - -

5 MR. JAY: You Honor, I object at this point
6 to the answer as being not responsive.
7 He is talking about what normal procedures
8 are.

9 THE COURT: Wait a minute. Do you have an
10 objection, Mr. Jay?

11 MR. JAY: Yes.

12 THE COURT: It is overruled. Ladies and
13 gentlemen, you must remember that he
14 is going to testify now about normal
15 procedure. That does not mean that that
16 is what happened in this case. You
17 should keep in consideration the cross
18 examination.

19 MR. ABRAMOWITZ: May I interpose an objection?

20 THE COURT: Yes.

21 MR. ABRAMOWITZ: I didn't think this witness
22 qualified as an expert and I didn't
23 raise objection to it before but this
24 time I do.

25 THE COURT: Overruled. Are you familiar with

1 the procedure?

2 THE WITNESS: Yes, sir. As a claims examiner
3 I taught people to take original claims.
4 I computed these. I sent out these
5 forms six years.

6 THE COURT: Very well.

7
8 BY MR. WILLIAMS:

9 Q Mr. Julius, what is the business practice of the employ-
10 ment, unemployment office with respect to receiving the
11 LO 12.11, what is marked as Government Exhibit 3?

12 MR. ABRAMOWITZ: Objection, your Honor. I think
13 that should be testified as to time.

14 THE COURT: Overruled. I will let him testify.

15 THE WITNESS: In 99.99 times these are always
16 received in the mail or they are received
17 in the mail. There are occasions when
18 a person would bring it in to the local
19 office.

20
21 BY MR. WILLIAMS:

22 Q Is there any business practice that was in existence
23 from say December of 1970 to December of 1972 as to what
24 procedure to follow, if such a form were not mailed to
25 the office?

A It would more or less be up to the - -

1 form, not the LO 330.

2 THE COURT:

3 But the whole history here, you
4 can tell us the history from this file
5 before you?

6 THE WITNESS:

7 Pretty well.

8 BY MR. JAY:

9 Q Sir, let me ask you this, you were never in the out-of-
10 state OSR Unit in Albany which handled or processed this
11 claim, were you?

12 A No, sir, never have.

13 Q So then you can't tell us on what basis they acted on
14 this claim, not your procedures, their procedure?

15 A No, sir.

16 MR. JAY:

17 I ask his entire testimony be
18 stricken, your Honor.

19 THE COURT:

20 I will deny that motion, but, Mr.
21 Williams, I think you should go ahead
22 on local claims and it seems, and I
23 don't know the vagueness here, but there
24 is some problem, evidently. Mr. Julius
25 said there are some other things that
they have that aren't here.

THE WITNESS:

No. I think you misunderstand,
sir.

1 Exhibit Number 166 for identification and ask you if you
2 can tell us what that is?

3 A. This is our folder for a Terry Cole, Social Security
4 Number 068-50-4481, and it is 307 Johnson Street, Buffalo,
5 New York.

6 Q. And what does that file contain?

7 A. It would contain all the necessary documents that we
8 would keep in our file.

9 Q. All right, and is that file maintained by the investigative
10 office in the normal course of business?

11 A. It is.

12 Q. And is it the normal course of business to maintain this
13 file?

14 A. It is.

15 Q. All right, sir. I now direct your attention to what is
16 marked Government Exhibit Number 167 for identification,
17 sir. That is claim for benefits form, correct?

18 A. Correct.

19 Q. And the name of the claimant and address is what?

20 A. Terry Cole, 307 Johnson Street, Buffalo, New York.

21 Q. And what is the date of the filing of that form?

22 A. December 20, 1971.

23 Q. And what is the name of the employer?

24 A. Cook's Auto Care, 83 Brunswick Boulevard, Buffalo, New York.

25 Q. All right, sir. Under the box marked "Location of job

1 if different", does anything appear there?

2 A. Blank.

3 Q. All right, sir. In a space to the left of the name of
4 the employer, what appears as the dates worked, from
5 when to when?

6 A. 4-17-71 to December 17, '71.

7 Q. All right, sir, and at the bottom where it says "Claimant
8 sign here", what name appears?

9 A. Terry Cole.

10 Q. All right, sir. Is that claim form a normal part of the
11 file, Government Exhibit Number 166?

12 A. It is.

13 Q. All right, sir. I now show you Government Exhibit Number
14 168. That is a request for employment and wage data
15 form, correct?

16 A. Correct.

17 Q. All right, and the employer's name and address listed
18 thereon is what?

19 A. Cook Auto Care, 83 Brunswick Boulevard, Buffalo, New York.

20 Q. All right, and how many weeks of employment are indicated
21 on that form?

22 A. Twenty-seven weeks.

23 Q. And what is the gross income indicated on that form?

24 A. \$4,160.

25 Q. And what is listed as the last date of employment?

- 1 A. December 16, 1971.
- 2 Q. All right, sir, and under, - below the name of employer,
3 where it says "Authorized signature", what name appears?
- 4 A. Elgin C. Cook.
- 5 Q. All right. Under "Title", what name appears?
- 6 A. Owner.
- 7 Q. All right, and the date of that is what?
- 8 A. 12-29-71.
- 9 Q. All right, sir. Does this request for employment wage
10 data Form 168 relate to the original claim which is
11 marked Government Exhibit 167?
- 12 A. It does.
- 13 Q. All right, sir. Can you tell us whether or not as a
14 result of that claim any checks were issued to Terry Cole?
- 15 A. There were.
- 16 Q. All right. Are you now referring to the benefit ledger
17 transcript?
- 18 A. Right.
- 19 Q. Is that a part of that file?
- 20 A. It is.
- 21 Q. All right, sir. How many checks were issued?
- 22 A. Thirty-one checks of \$75 each.
- 23 Q. All right, and in what time period?
- 24 A. For the week ending 1-2-72 to the week ending 7-30-72.
- 25 Q. All right, sir, and can you tell us whether or not those

1 checks were cashed and returned to the State Bank at
2 Albany?

3 A. The checks I have here would have all been returned to
4 the State Bank.

5 Q. Do they indicate a cancellation stamp on the back?

6

7 THE COURT: Excuse me, Mr. Lamantia. Will you
8 just come up here.

9 THE WITNESS: Correct.

10

11 BY MR. WILLIAMS:

12 Q. All right. Now, Mr. Julius, I am going to show you what
13 is marked as Government Exhibits Number 169 to 175.
14 Those are called pay certification or pay order forms,
15 is that correct?

16 A. Correct.

17 Q. All right, sir, and does a signature appear on each of
18 those forms?

19 A. There is a signature on each one.

20 Q. And what is the signature?

21 A. Three of them have Terry Cole and four of them have
22 T. Cole.

23 Q. All right, sir. Can you tell us whether or not those
24 exhibits Number 169 to 175 were mailed by the local office
25 to Albany?

1 A. They would be.

2 Q. All right, and based upon those, checks were issued, were
3 they?

4 A. They were.

5 Q. Okay. I now direct your attention to Government Exhibits
6 Number 166 through 182 for identification. Those are
7 checks drawn on the State of New York, is that correct?

8 A. Correct.

9 Q. All right, and those checks are made payable to whom?

10 A. T. Cole at 307 Johnson Street.

11 Q. All right, sir. Is there anything in the file that
12 indicates there was ever any change of address?

13 A. No, sir, there was no change as far as the records are
14 concerned.

15

16 MR. WILLIAMS: All right. I have no more questions.

17 THE COURT: Anything else?

18 MR. JAY: No questions here.

19 THE COURT: Nothing on that file. All right.

20 Go ahead, Mr. Williams.

21

22 BY MR. WILLIAMS:

23 Q. Mr. Julius, I now show you what is marked Government
24 Exhibit 185 for identification. Can you tell us what
25 that is?

1 PROCEEDINGS: December 22, 1975, 12:02 p.m.

2 APPEARANCES: As before noted.

3 (Defendant present.)

4 (Jury present.)

5
6 (Government Exhibits Numbered
7 507 through 512, inclusive and respec-
8 tively, marked for identification.)
9

10 THE COURT: Mr. Williams.

11 MR. WILLIAMS: Thank you, your Honor. I call
12 Harold Doran to the stand.
13

14 H A R O L D D O R A N (40 Westchester Road, Williamsville,
15 New York), a witness called by and in behalf of the Government,
16 having been first duly sworn, was examined and testified as
17 follows:
18

19 DIRECT EXAMINATION BY MR. WILLIAMS:

20 THE COURT: It should be noted that all jurors
21 are here and all counsel and all
22 defendants.

23 BY MR. WILLIAMS:

24 Q Mr. Doran, what is your business or occupation, sir?

25 A I am a real estate broker.

1 Q All right, sir, and do you have anything to do with
2 the Less-Lee Corporation?

3 A I am president of Less-Lee Corporation.

4 Q All right, and how long have you been president of
5 Less-Lee, Incorporated, approximately?

6 A Over twenty years.

7 Q All right, sir, and was there a time when Less-Lee
8 Corporation owned a piece of property known as
9 305-307 Johnson Street?

10 A Yes, sir.

11 Q All right, sir. Does it still own that piece of
12 property today?

13 A No, sir.

14 Q All right, sir. Can you tell us when that property
15 was conveyed out by Less-Lee?

16 A November of 1974.

17 Q All right, sir. Mr. Doran, did you produce and bring
18 with you today, pursuant to subpoena certain records
19 of the Less-Lee Corporation?

20 A I did.

21 Q All right sir. Let me show you, Mr. Doran, what I
22 have marked as Government Exhibit Number 512 for
23 identification. Are those the records that you brought
24 with you?

25 A Yes, they are.

1 Q All right, sir, and just very generally what are those
2 records?

3 A They are rent records of the premises stating the
4 name of the tenant, the apartment occupied, the monthly
5 rental.

6 Q All right, sir.

7 THE COURT: Excuse me, Mr. Williams. Can you
8 suspend it just a minute. I will be
9 right back.

10 MR. WILLIAMS: Oh, sure, your Honor.

11
12 (Recess taken at 12:07 p.m.)

13
14 * * * * *

15
16 PROCEEDINGS: After recess, 12:12 p.m.

17 APPEARANCES: As before noted.

18 (Defendants present.)

19 (Jury present.)

20
21 HAROLD DORAN, a witness called by and in behalf
22 of the Government, having been previously duly sworn, resumed
23 the witness stand and testified further as follows:

24

25

1 DIRECT EXAMINATION BY MR. WILLIAMS (RESUMED):

2 Q Mr. Doran, what is the nature of those records you have?

3 A Rent sheets, rent records.

4 Q All right. For premises including 305-307 Johnson
5 Street?

6 A Right.

7 Q All right, sir. Are those rent records maintained by
8 the Less-Lee Corporation in the ordinary course of
9 business?

10 A Yes.

11 Q Is it the ordinary course of business to maintain
12 such records such as those rent records?

13 A Yes.

14 Q All right, sir. Now, Mr. Doran, the record you have
15 in front of you appear to be Xerox copies, is that
16 correct?

17 A Correct.

18 Q All right. Did you have an opportunity to compare
19 those with the original records?

20 A I did.

21 Q All right, sir. Are those records true and accurate
22 copies of the original records?

23 A They are.

24 Q All right, and those, sir, are rent records for what
25 year?

1 A 1970, 1971, 1972.

2 Q All right, sir, and can you tell us, please, who was
3 or who were the tenants of premises known as 307
4 Johnson Street for the year 1970?

5 A Louis Toliver, Curly Howe, Talford Munro and Katie
6 Lyles.

7 Q All right, sir, and for the year 1971, who were the
8 tenants of that address?

9 A Same names.

10 Q Same people?

11 A Same people.

12 Q All right, sir, and what about for the year 1972?

13 A Same people, same names.

14 MR. WILLIAMS: All right. Thank you. I have
15 no more questions.

16 THE COURT: Any questions? No questions.
17 Thank you, Mr. Doran.

18 MR. WILLIAMS: No questions. We offer them in
19 evidence. I call Virginia Kosuda.

20
21 (Government Exhibit Number 512
22 received in evidence.)
23

24 * * * * *

1 verification?

2 A The period from 1-18-71 to 1-16-72.

3 Q All right, sir. As a result of the claim and verifi-
4 cation were any checks issued to Louis Rise?

5 A They were.

6 Q All right. You are now referring to the benefit
7 ledger transcript, is that correct?

8 A Correct.

9 Q Is that a part of that file folder?

10 A It is.

11 Q All right, sir. How many checks were issued and in
12 what amount between what dates?

13 A There were twenty-seven checks issued in the amount
14 of \$75.00 each and that would be from the week ending
15 1-30-72 to the week ending 7-30-72.

16 Q All right, sir, and does the file reflect whether or
17 not, - where those checks were mailed, more specifically,
18 the address to which those checks were mailed?

19 A The original checks it looks, - well, first the record
20 shows a change of address to 71-8 Wilson Street on
21 3-8-72. Prior to that I would have to assume without
22 looking at the checks that they went to 39-13 Olcott.

23 Q All right. Would you look at those checks?

24 A There is one check that went to 39-13 Olcott and the
25 rest look like they went to 71-8 Wilson.

1 Q All right, sir. Let me now show you what are marked
2 as Government Exhibits Numbered 297 through 300.
3 Those, sir, are the pay orders or pay certification
4 forms, is that correct?

5 A Correct.

6 Q And are each of those signed?

7 A They are.

8 Q And what is the name?

9 A Louis C. Rise.

10 Q All right. Were each of those mailed to Albany?

11 A They were.

12 Q All right, sir. Let me now direct your attention to
13 what are marked as Government Exhibits Number 301, 302
14 and 303. Are each of those checks made payable to
15 L.C.Rise?

16 A They are.

17 Q At what address?

18 A One is 39-13 Olcott Street.

19 Q That is Number 303?

20 A 303.. The others are to 71 Wilson Street, Lackawanna,
21 New York.

22 Q All right, sir. Were each of those checks cashed and
23 returned to the State Bank at Albany?

24 A They were.

25 Q All right, sir. Are each of those checks endorsed on

1 the back?

2 A They are.

3 Q And the name of the endorsement?

4 A Louis C. Rise.

5 Q All right, sir. Now, are each of those documents
6 I have referred to, Mr. Julius, a part of the file
7 folder relating to Louis C. Rise?

8 A They are.

9 Q Let me refer you back to Exhibit 296, the claim for
10 benefits form. Is there anything on that claim for
11 benefits form that indicates the sex of the person
12 filing for unemployment benefits?

13 A Not on this form.

14 Q Not on the claim for benefits form?

15 A No, sir.

16 Q All right. I am sorry.

17 A May I explain?

18 Q Yes.

19 A There is no definite place for it. There is on
20 question 15. It says "For women only", more or less
21 assumed that if it isn't filled out, that a male
22 filled it out.

23 Q All right, sir. With respect to the filling out of
24 that form, is it necessary that that form be filled
25 out at the employment office?

1 Q Oh, this is Niagara Falls?

2 A Correct.

3 Q How many people are there?

4 A I have no idea.

5 Q Never been there?

6 A Yes, I have been there. Maybe three or four.

7 MR. JAY: That is all.

8 THE COURT: Anything else from Mr. Julius on
9 this folder? Nothing further. You
10 may continue, Mr. Williams.

11
12 DIRECT EXAMINATION BY MR. WILLIAMS (RESUMED):

13 Q Mr. Julius, I now show you Government Exhibit 320 and
14 that file relates to whom?

15 A Robert J. Owens, Social Security Number 120-50-3349,
16 307 Johnson Street, Buffalo, New York.

17 Q What was the address, sir?

18 A 307 Johnson Street.

19 Q All right, and does that file contain a claim for
20 benefits?

21 A It does.

22 Q That is Government Exhibit 321?

23 A Correct.

24 Q All right. You have given us from the file folder the
25 name and address of the claimant. Is that the same on

- 1 that claim form?
- 2 A It is.
- 3 Q All right, sir, and what does the claimant list as
- 4 the name and address of his employer?
- 5 A Bee Gee's Arco, 156 Northampton Street, Buffalo, New
- 6 York.
- 7 Q And under the box marked "Location of job if different
- 8 from above", is there anything filled in there?
- 9 A It is blank.
- 10 Q All right, sir, and what was the date of the filing
- 11 of that claim?
- 12 A October 6, 1972.
- 13 Q All right, sir. Does that file contain an employment
- 14 verification form relating to that claim for benefits
- 15 form?
- 16 A It does.
- 17 Q All right, sir, and under the box marked "Authorized
- 18 signature" what name appears?
- 19 A Frederick Walentynowicz.
- 20 Q All right, and what is indicated on that form as the
- 21 last date of employment?
- 22 A September 29, 1972.
- 23 Q And what is listed on that form insofar as total weeks
- 24 worked and total wages earned?
- 25 A Fifty-two weeks, \$7,896.43.

- 1 Q All right, sir. Based upon that claim for benefits
2 and that verification form, were checks issued in the
3 name of Robert J. Owens?
- 4 A They were.
- 5 Q And how many and in what amount and between what
6 periods of time?
- 7 A There were nine checks issued. The first check was
8 for \$56.25. The remainder were for \$75.00 each from
9 the week ending 10-15-72 to the week ending 12-10-72.
- 10 Q All right, sir. I now direct your attention to Govern-
11 ment Exhibits 322 through 325. Those are the pay
12 certification forms, correct?
- 13 A Correct.
- 14 Q Are they all signed?
- 15 A Correct.
- 16 Q What name appears on the line marked "Signature"?
- 17 A Three have Initials R.J. Owens. One has Robert J. Owens.
- 18 Q I now call your attention to 4 checks marked Government
19 Exhibits 326 through 329. Those are issued to R.J.
20 Owens?
- 21 A They are.
- 22 Q All right, and address of 307 Johnson Street?
- 23 A Correct.
- 24 Q All right, sir. Were each of those cashed and returned
25 to the State Bank at Albany?

1 A They were.

2 Q Were all these documents I refer you to, part of the
3 file folder of Robert J. Owens?

4 A They are.

5 MR. WILLIAMS: No more questions.

6 MR. JAY: Nothing here.

7 MR. LaMANTIA: No questions.

8 THE COURT: Mr. Williams.

9
10 BY MR. WILLIAMS:

11 Q I now show you, Mr. Julius, Government Exhibit 331.
12 Is that one of your file folders?

13 A It is.

14 Q All right. Is that file folder maintained by your
15 office in the ordinary course of business?

16 A It is.

17 Q And is it the usual business of your office to maintain
18 a file folder such as that one?

19 A It is.

20 Q All right. Does that contain an application for
21 employment, - unemployment insurance benefits?

22 A Yes, it does.

23 Q All right. Again, now referring to what is marked
24 as Government Exhibit Number 332.

25 A Correct.

- 1 Q And that is a claim filed by whom?
- 2 A John T. Toliver, 71-8 Wilson Street, Lackawanna, New
- 3 York.
- 4 Q All right, sir, and who does he list as his employer
- 5 and address?
- 6 A Bee Gee's Arco, 156 Northampton Street, Buffalo, New
- 7 York.
- 8 Q All right, sir. Is there anything indicated in the
- 9 box marked "Location of job if different from above"?
- 10 A It is blank.
- 11 Q All right, sir, and between what dates does John T.
- 12 Toliver claim that he worked for Bee Gee Arco?
- 13 A 3-18-70 to 9-21-72.
- 14 Q All right, sir. Does that file contain a verification
- 15 of employment form relating to that claim?
- 16 A It does.
- 17 Q All right, and in Block 5 under "Authorized signature",
- 18 what name appears?
- 19 A Frederick Walentynowicz.
- 20 Q All right, sir, and what are the number of weeks
- 21 indicated as weeks worked?
- 22 A Fifty-two weeks.
- 23 Q And what is indicated as the salary earned?
- 24 A \$8,183.42.
- 25 Q And what is the last date worked?

1 A Looks like September 26, 1972.

2 Q All right, sir. Based upon that claim and that
3 verification of employment, were any checks issued to
4 John Toliver?

5 A There were.

6 Q All right, sir, how many?

7 A Ten checks.

8 Q In what amount of money and between what periods of
9 time?

10 A \$75.00 each from the week ending 10-8-72 to the week
11 ending 12-10-72.

12 Q All right, sir. I now show you Government Exhibits
13 Numbers 333 to 337. Those are the pay certifications,
14 correct?

15 A Correct.

16 Q All right. Does a signature appear on each of those?

17 A Correct.

18 Q All right, and what is the name appearing on the line
19 marked "Signature"?

20 A They all have J.T. Toliver with the exception of one
21 which has John T. Toliver.

22 Q All right, sir. Were those pay orders mailed to Albany?

23 A Correct.

24 Q And based thereon were checks drawn?

25 A They were.

1 Q I now show you Government Exhibits 338 through 342.
2 Are each of those checks drawn on the State of New York?

3 A They are.

4 Q Are they each payable to J.T. Toliver at 71-8 Wilson?

5 A Correct.

6 Q All right, sir. Were each of those checks endorsed,
7 cashed and returned to the State Bank at Albany?

8 A They were.

9 Q All right, sir, and are each of the documents that I
10 have shown you a part of the file folder relating to
11 John T. Toliver?

12 A They are.

13 MR. WILLIAMS: I have no more questions.

14
15 CROSS EXAMINATION BY MR. JAY:

16 Q Where is that green card? This file indicates that
17 ten checks were paid, ten weeks unemployment, is that
18 right?

19 A I believe so, right.

20 Q Did the party go back to work?

21 A No, sir. There is no indication of it here. There is
22 no back to work card in here.

23 MR. JAY: Thank you. Nothing further.

24 THE COURT: Anything further?

25 MR. ABRAMOWITZ: Nothing, your Honor.

- 1 A Louis Clyburn, Social Security Number 078-50-6452,
2 170 Bigelow Place, Depew, New York.
- 3 Q All right. Exhibit 365 is the claim for benefits,
4 correct?
- 5 A Correct.
- 6 Q Does that contain the same name and address of the
7 claimant as you have just given us?
- 8 A No, it doesn't. There was a change of address. The
9 original application had 83 L-e-a-v-e-r-e-d, Depew,
10 New York.
- 11 Q And the change of address was to where?
- 12 A Well, there were two changes. One to 7080 C Lance
13 Court, Depew, and another to 180 Bigelow Place, Depew,
14 New York.
- 15 Q All right, sir, and who does the claimant Louis Clyburn
16 allege as his employer?
- 17 A Almassi's Tavern, 414 Sherman Street, Buffalo, New York.
- 18 Q All right, and the box marked "Location of job if
19 different", does anything appear therein?
- 20 A Blank.
- 21 Q All right, sir. When was that filed?
- 22 A February 2, 1972.
- 23 Q All right. Is there a verification form that relates
24 to that claim for benefits?
- 25 A There is.

1 Q All right, sir, and the name and address of the
2 employer on that form?

3 A Almassi's Tavern, 414 Sherman Street, Buffalo, New York.

4 Q All right, and what is the signature appearing under
5 Box 5, "Authorized signature"?

6 A Steven Almassi.

7 Q And what is the date?

8 A 2-8-72.

9 Q All right, sir, and what is indicated on that form
10 as the total number of weeks worked and the wages
11 earned?

12 A Fifty-two weeks, \$7,962.46, I believe.

13 Q And what is indicated as last date worked?

14 A January 26, 1972.

15 Q All right, sir. Based upon that claim and that
16 verification were any checks issued to Louis Clyburn
17 or L. Clyburn?

18 A They were.

19 Q How many?

20 A Twenty-six checks.

21 Q In what amount and between what periods of time?

22 A From the week ending 2-13-72 to the week ending 8-6-72,
23 all in the amount of \$75.00

24 Q Were all those checks cashed and returned to the State
25 Bank at Albany?

A They were.

1 Q All right, sir. I am now showing you, Mr. Julius,
2 what is marked as Government Exhibit Number 366
3 through 370. Those are the pay orders or pay certifica-
4 tion forms, correct?

5 A Correct.

6 Q And are each of those signed?

7 A Correct.

8 Q And what name appears in the box marked "Sign here"?

9 A Two have L. Clyburn and three have Louis Clyburn.

10 Q All right, sir, and were each of those mailed to
11 Albany, New York?

12 A They were.

13 Q And based thereon, were checks issued to L. Clyburn?

14 A They were.

15 Q I now show you, sir, what is marked as Government
16 Exhibits Number 371 through 375. Each of those are
17 Checks drawn on the State of New York Division of
18 Unemployment, correct?

19 A Correct.

20 Q All right, sir, each payable to L. Clyburn?

21 A Correct.

22 Q All right, sir. I now show you specifically Exhibits
23 Number 371 and 372, check dated July 14, 1972 and one
24 dated June 9, 1972. Do second endorsements appear on
25 the back of each of those checks?

1 MR. ABRAMOWITZ: No questions.

2 MR. LAMANTIA: No questions.

3 THE COURT: All right. Next folder, please,
4 Mr. Williams.

5
6 BY MR. WILLIAMS:

7 Q I now refer you, Mr. Julius, to Government Exhibit
8 Number 414. What does that file relate to?

9 A This is our file for James Cole, Social Security
10 Number 078-50-5053, at 374 Madison Street, Buffalo.

11 Q All right, sir, and again, is that a file maintained
12 by your office in the ordinary course of business?

13 A It is.

14 Q And was it the ordinary course of business of your
15 office to maintain a file such as that?

16 A It is.

17 Q All right, sir, and I direct your attention to Government
18 Exhibit Number 415. That is a claim for benefits form,
19 correct?

20 A Correct.

21 Q Is the name of the claimant and address the same as
22 you have just indicated?

23 A It is.

24 Q All right, sir, and what is the employer listed on the
25 form?

1 A Charlie's Sunoco, 387 Woodlawn Avenue, Buffalo, New York.

2 Q Is there anything indicated in the box marked
3 "Location of job if different from above"?

4 A Blank.

5 Q All right, sir, and when does the claimant allege that
6 he worked for Charlie's Sunoco Station?

7 A 3-27-71 to 12-16-71.

8 Q All right, sir, and is that file also, - does that
9 file also contain a verification form?

10 A It does.

11 Q All right, sir. The name of the employer is Charlie's
12 Sunoco?

13 A Correct.

14 Q And authorized signature, what name appears?

15 A Harold Osborne.

16 Q All right, and when was that received in your office?

17 A December 30, 1971.

18 Q All right, sir, and how many weeks did the claimant
19 work?

20 A Fifty-two weeks.

21 Q And what is the indicated wage earned?

22 A \$8,320.

23 Q And what is indicated as the last date of employment?

24 A December 15, '71.

25 Q All right, sir. Based upon that claim and that

1 verification, were any checks issued in the name of
2 James Cole or J. Cole?

3 A They were.

4 Q How many and what amount and between what periods of
5 time?

6 A Thirty-one checks from the week ending 1-2-72 to the
7 week ending 7-30-72, all in the amount of \$75.

8 Q All right, sir. I now show you what is marked as
9 Government Exhibits Numbers 416 through 422. Those
10 are pay orders or pay certification forms, correct?

11 A That's correct.

12 Q And are each of those signed?

13 A They are.

14 Q And what name appears on the line for the signature?

15 A J. Cole appears on one and James Cole appears on all
16 the rest.

17 Q All right, sir, and were each of those pay orders mailed
18 to Albany?

19 A They were.

20 Q And based thereon, were checks drawn?

21 A They were.

22 Q All right, sir. Is there any indication in the file
23 of a change of address for J. Cole?

24 A None on the record.

25 Q All right, sir. I now show you what is marked Government

1 Exhibits 423 through 429. Are each of those documents
2 drawn on the State of New York Unemployment Insurance
3 office payable to J. Cole?

4 A They are.

5 Q All right, sir, and were each of those cashed and
6 returned to the State Bank at Albany?

7 A They were.

8 Q All right, sir. I direct your attention specifically
9 to Government Exhibit 429 which is a check payable to
10 J. Cole dated January 12, 1972. Is there a second
11 endorsement on the back of that?

12 A There is.

13 Q And what is the name of the second endorsement?

14 A Louis Toliver.

15 Q All right, sir. Are each of these documents I have
16 referred you to a part of the file folder for James
17 Cole?

18 A They are.

19 MR. WILLIAMS: All right, sir. I have no more
20 questions.

21 MR. JAY: No questions here.

22 MR. ABRAMOWITZ: No questions.

23 MR. LAMANTIA: No questions.

24 THE COURT: Nothing further. Next folder, please.
25

1 PROCEEDINGS: After recess, 3:50 p.m.

2 APPEARANCES: As before noted.

3

4 (Defendants present.)

5 (Jury present.)

6

7 WILLIAM JULIUS, a witness called by and in behalf
8 of the Government, having been previously duly sworn, resumed
9 the witness stand and testified further as follows:

10

11 DIRECT EXAMINATION BY MR. WILLIAMS: (Resumed)

12

13 MR. WILLIAMS: Is the Court ready?

14 THE COURT: Yes, Mr. Williams.

15

16 BY MR. WILLIAMS:

17 Q. Thank you. Mr. Julius, before we broke for recess, I
18 was about to show you Exhibit Number 438 for identifica-
19 tion. That, sir, is what?

20 A. It is our file for Terry Rogers, Social Security Number
21 233-96-3356, at 307 Johnson Street, Buffalo, New York.

22 Q. All right, sir, and directing your attention to Exhibit
23 439, the claim for benefits, insofar as the name and
24 address of the claimant is concerned is that the same
25 as the information you just gave from the file cover?

- 1 A. Correct.
- 2 Q. All right, sir, and who does Terry Rogers claim he
3 worked for?
- 4 A. Dickson Sunoco, 156 Northampton Street, Buffalo, New
5 York.
- 6 Q. All right, and for what period of time?
- 7 A. From 5-9-70 to 9-22-72.
- 8 Q. All right, sir. I now call your attention to the request
9 for employment and wage data verification, block Number 5,
10 name of employer is --
- 11 A. Dickson Sunoco.
- 12 Q. And the signature?
- 13 A. Jimmy Dickson.
- 14 Q. All right. I call your attention to a, - looks like a
15 red ink stamp in the middle of the page, it says, "Late
16 reply", is that correct?
- 17 A. Correct.
- 18 Q. And what is the date of that next to the signature?
- 19 A. 10-6-72.
- 20 Q. All right, sir, and what is indicated on that form
21 insofar as the total number of weeks worked and the
22 gross earnings?
- 23 A. Fifty-two weeks, \$8,016.17.
- 24 Q. All right, and what is indicated as the last date of
25 employment?

- 1 A. 9-21-72.
- 2 Q. All right, sir. Based upon the claim in the name of
- 3 Terry Rogers, were checks issued?
- 4 A. They were.
- 5 Q. All right, and again as before, how many and what amount
- 6 and between what periods of time?
- 7 A. There were eleven checks issued, all in the amount of
- 8 \$75 from the week ending 10-8-72 to the week ending
- 9 12-17-72.
- 10 Q. All right, sir, and were each of those checks cashed
- 11 and returned to the State Bank at Albany?
- 12 A. They were.
- 13 Q. All right, sir. I now show you what is marked as
- 14 Government Exhibits Number 440 through 445. Those are
- 15 the pay certification or pay order forms, correct?
- 16 A. Correct.
- 17 Q. Are each of those signed?
- 18 A. They are.
- 19 Q. What name appears in the place for signature?
- 20 A. T. Rogers appears on two and Terry Rogers appears on
- 21 four.
- 22 Q. All right, sir. I now show you Government Exhibits
- 23 Number 446 through 451. Each of those are checks
- 24 drawn on the State of New York, is that correct?
- 25 A. Correct.

1 Q. Each payable to T. Rogers at 307 Johnson Street?

2 A. Correct.

3 Q. All right, and are all of these documents I have shown
4 you a part of the file folder for Terry Rogers?

5 A. They are.

6 Q. All right, sir, and is that file folder maintained by
7 your office in the ordinary course of business?

8 A. It is.

9 Q. And was it the ordinary course of business of your
10 office to maintain that file?

11 A. It was.

12

13 MR. WILLIAMS: Any questions?

14 THE COURT: Next folder, please.

15

16 BY MR. WILLIAMS:

17 Q. Mr. Julius, I now show you Government Exhibit Number 432.
18 Is that your file folder?

19 A. It is.

20 Q. Relating to whom?

21 A. Jim Hooker, Social Security Number 097-50-6905, 9 Henry
22 Street, Rochester, New York.

23 Q. All right, sir. Directing your attention to a claim
24 form, Government Exhibit 433, what address appears on
25 there for the address of the claimant?

1 Q All right, sir, and what, if anything, happened when
2 you got to the unemployment office?

3 A When we arrived at Lackawanna, she got out on my side,
4 the passenger side. It was a two door car.

5 Q All right, and what kind of car was it, by the way?

6 A Green Cadillac.

7 Q Do you remember the year?

8 A '69.

9 Q All right, sir. Are you indicating McClendon got out
10 on your side?

11 A Yes.

12 Q All right, and what, if anything, happened?

13 A I beg your pardon?

14 Q What happened then? Tell us what happened?

15 A She got out of the car to go into the employment office
16 but apparently she forgot her book. She came back to
17 the car and the books was over the sun visor and she
18 reached for the books and the books fell and she taken
19 one and went into the office.

20 Q You said some books fell?

21 A Unemployment books.

22 Q All right, sir, and how do you know they were unemploy-
23 ment books?

24 A I recognized them since I had been laid off myself from
25 Bethlehem Steel.

1 Q And how many did you say there were?

2 A I didn't count them exactly.

3 Q Do you have any estimate?

4 A I would estimate five at least.

5 Q All right, sir, and you said she took one of those
6 books?

7 A Yes.

8 Q All right. What happened then?

9 A Placed the other books over the sun visor and went
10 in the office to sign up. I didn't go in with her.

11 Q And did there come a time when she came out?

12 A Yes.

13 Q Did you then leave the area?

14 A Yes.

15 Q All right, sir, and where did you go from there?

16 A We came from Lackawanna to Buffalo. We came down
17 South Park way and we stopped at the bank on Seneca
18 and Emslie.

19 Q All right, sir, and what, if anything, happened there?

20 A Mr. Cook went inside to cash his unemployment check.

21 MR. JAY: I object, your Honor, no testimony

22 Mr. Cook ever had any - -

23 THE COURT: Sustain the objection. Put a
24 question, Mr. Williams.
25

1 BY MR. WILLIAMS:

2 Q Yes, all right. Did you observe what, if anything,
3 Mr. Cook did?

4 A He went into the bank to cash an unemployment check.

5 MR. JAY: Objection, your Honor, again.

6 THE COURT: He left the car?

7 THE WITNESS: He left the car.

8 THE COURT: All right. Mr. Williams.

9

10 BY MR. WILLIAMS:

11 Q All right. Prior to his leaving the car, did he take
12 anything with him?

13 A Yes.

14 Q All right, describe - -

15 A When he left the - -

16 Q No, describe what he took with him.

17 A Unemployment checks.

18 Q Can you describe what they looked like?

19 A Yes, they are yellow checks.

20 Q All right, sir, and did you see any printing on them?

21 A Well, I couldn't read the writing because I wasn't
22 that close to the checks, but I know they was unemploy-
23 ment checks.

24 Q All right, sir. Did you have any other occasion to go
25 to the unemployment office in Lackawanna?

- 1 A Yes, on a number of occasions several weeks later.
- 2 Q Well, how much later?
- 3 A Several weeks later.
- 4 Q All right, and how did it come about that you went
- 5 out there that time? Tell us the circumstances of
- 6 that.
- 7 A Well, we were business partners, I before stated, and
- 8 we was working on the building and I accompanied him
- 9 in the car to pick up Rose McClendon on Main and Court
- 10 and we went back to the unemployment office in
- 11 Lackawanna.
- 12 Q All right, and what, if anything, happened when you
- 13 went out there then?
- 14 A She went inside and when she got out she got one of
- 15 the books out of the glove compartment and went inside
- 16 and signed up and came back.
- 17 Q All right, sir, and can you describe what the book
- 18 looked like?
- 19 A Yes. It was an acqua, light green or light blue, you
- 20 know, unemployment book.
- 21 Q Did you recognize that as an unemployment book?
- 22 A Yes.
- 23 Q All right, and did you see them come out of the office?
- 24 A Yes, she came out of the office.
- 25 Q And what happened then?

1 A She returned to the car and we came back to an address
2 on Woodlawn.

3 Q All right, sir. You indicated the glove compartment
4 was opened?

5 A I beg your pardon?

6 Q You said that you saw an opened glove compartment?

7 A To get the book out, she had to open it.

8 Q All right, sir, and did you see anything else in the
9 glove compartment?

10 A Well, there was several objects which I didn't try
11 to memorize each object that was in there. There was
12 unemployment books there and she taken one out.

13 Q You say there were books in there?

14 A Books.

15 Q How many?

16 A I didn't count them, sir. At least four or five.

17 Q All right, sir, the same as these other ones you have
18 described, sort of aqua in the color?

19 A Yes.

20 Q And how did you get out to the office on that occasion?

21 A In Mr. Cook's Cadillac.

22 Q Was he driving?

23 A Yes.

24 Q All right.

25 A During this period of time he changed cars from a '69

1 A Yes, I did.

2 MR. WILLIAMS: All right, sir. I have no more
3 questions. I wish to offer 463.

4 THE COURT: Mr. Walsh.

5 MR. WALSH: May I see those, Mr. Williams?

6 MR. WILLIAMS: Yes, they are right here.

7 MR. WALSH: May I have a moment. No objection.
8

9 (Government Exhibit Number 463
10 received in evidence.)
11

12 MR. WILLIAMS: I have no more questions. Thank you.

13 THE COURT: Any questions? All right. Thank
14 you, Mr. Bottita.

15 MR. WILLIAMS: Thank you, sir. I call George
16 Raspberry.
17

18 * * * * *

19
20 G E O R G E R A S P B E R R Y (156 Northampton Street,
21 Buffalo, New York), a witness called by and in behalf of the
22 Government, having been first duly sworn, was examined and
23 testified as follows:
24
25

1 DIRECT EXAMINATION BY MR. WILLIAMS:

2 Q Mr. Raspberry, I ask you to speak as directly into the
3 microphone as you can and keep your voice up, please.

4 A All right.

5 Q Are you married, sir?

6 A Yes, I am.

7 Q What is your wife's name?

8 A Caineretta Raspberry.

9 Q How long have you been married?

10 A Oh, just about forty year.

11 Q All right, sir. Mr. Raspberry, are you a defendant
12 in this action?

13 A Yes, I am.

14 Q All right, sir, and did you enter a plea of guilty?

15 A I did.

16 Q All right, and what did you plead guilty to?

17 A Fraud and conspiracy.

18 Q To do what?

19 A To defraud the New York State Employment Service.

20 Q All right, sir, and did you enter a plea of guilty to
21 Count 35 and 36 of the indictment?

22 A Yes.

23 Q All right, sir. Now, Mr. Raspberry, have you ever been
24 convicted of a crime before?

25 A Yes, I have.

1 Q All right. How many times?

2 A Several times.

3 Q All right, for burglary?

4 A Correct.

5 Q For vagrancy?

6 A Right.

7 Q For drunkenness?

8 A Right.

9 MR. ABRAMOWITZ: I object to the leading, your Honor.

10 I think the witness should tell us the
11 answers to those questions.

12 THE COURT: Please do not lead, Mr. Williams,
13 but I will let the testimony stand.

14

15 BY MR. WILLIAMS:

16 Q All right, thank you. Now, Mr. Raspberry, in connection
17 with your plea of guilty in the present case, have you
18 been sentenced yet?

19 A No, I haven't.

20 Q All right, sir. Have any promises been made to you
21 as to what the sentence will be?

22 A No.

23 Q All right, sir. Mr. Raspberry, did there come a time
24 when you met an individual by the name of Elgin Cook?

25 A Yes.

1 Q And about when did you meet him?
2 A Oh, long about the fall of '71, the early fall.
3 Q All right, sir, and since that time, about how many
4 times have you seen him?
5 A Oh, numerous.
6 Q Well, how many would you say is numerous?
7 A Oh, we used to be together constantly.
8 Q All right, sir. Do you see him in the courtroom today?
9 A Yes, I do.
10 Q All right. Would you point to him, please?
11 A That's him sitting there.
12 MR. JAY: We will stipulate that he has pointed
13 to Mr. Cook, your Honor.
14 THE COURT: All right, Mr. Cook.
15
16 BY MR. WILLIAMS:
17 Q All right, thank you. Mr. Raspberry, did your wife
18 Cainetta ever work for Elgin Cook?
19 A No.
20 Q Did she ever work for the Cook and Green Car Wash?
21 A No.
22 Q Did she ever work for Cook Auto Care?
23 A No.
24 Q All right, sir. Let me show you, Mr. Raspberry, what
25 is marked as Government Exhibit Number 225. Do you want

1 to put your glasses on, please. I show you Exhibit
2 Number 225 which is original claim for benefits form.
3 See at the bottom where it says "Claimant sign here".
4 Do you see a name there?

5 A Yes.

6 Q Do you know who's signature that is?

7 A That is my wife's signature.

8 Q Do you know who filled out the form?

9 A No, I don't.

10 Q All right, sir. Do you know whether or not your wife
11 received any checks as a result of completing that
12 form?

13 A Yes, she did.

14 Q All right, sir.

15 MR. JAY: I am sorry. I didn't hear the
16 answer.

17 THE WITNESS: Yes, she did.

18
19 BY MR. WILLIAMS:

20 Q Mr. Raspberry, let me show you a series of four checks
21 which are part of Government Exhibit Number 224. Have
22 you seen those before?

23 A Yes, I have.

24 Q Take a look at those.

25 A I have seen them.

- 1 Q Who got those checks?
- 2 A My wife.
- 3 Q All right. Would you take a look at the reverse
- 4 side of those checks. Do you see the second endorsement?
- 5 A Yes.
- 6 Q Who signed that?
- 7 A I did.
- 8 Q All right. Mr. Raspberry, I now want to show you a
- 9 series of six checks that are part of Government
- 10 Exhibit Number 137 and I ask you to look at those,
- 11 sir, and I ask you if you have seen those checks before?
- 12 A Yes, I have.
- 13 Q All right. Will you take a look at each of those on
- 14 the front. All right. Those are all payable to
- 15 J. Carter, are they?
- 16 A Correct.
- 17 Q 183 Northampton?
- 18 A Correct.
- 19 Q Apartment 5?
- 20 A Correct.
- 21 Q All right. In 1971 and 1972, who lived at 183
- 22 Northampton Street, Apartment 5?
- 23 A I lived there.
- 24 Q All right, with whom?
- 25 A With my wife.

1 Q All right, sir. What, if anything, did you do with
2 those checks?

3 A I delivered those to Elgin.

4 Q To who?

5 A Elgin.

6 Q Elgin who?

7 A Cook.

8 Q All right, sir. Let me now show you, Mr. Raspberry,
9 one, two, three, four, five, six checks payable to
10 P. A. Green, 183 Northampton Street. Will you take a
11 look at each of those?

12 MR. COHEN: What number is that, please?

13 BY MR. WILLIAMS:

14 Q That is part of Exhibit Number 137. I am sorry, 18.
15 Have you seen those before?

16 A Yes, I have.

17 Q All right. What, if anything did you do with those?

18 A Delivered them to Elgin.

19 Q Elgin Cook?

20 A Right.

21 Q Mr. Raspberry, can I ask you to keep your voice up
22 a bit, please. Mr. Raspberry, did you ever make a
23 claim for unemployment benefits claiming that you
24 worked for Pat's Pad & Lounge?

25 A I did.

- 1 Q Where's Pat's Pad & Lounge located?
- 2 A On Fillmore.
- 3 Q In Buffalo?
- 4 A Right.
- 5 Q All right. Have you ever been to Pat's Pad & Lounge?
- 6 A I have.
- 7 Q How many times?
- 8 A Once.
- 9 Q And who was with you?
- 10 A Elgin.
- 11 Q Elgin Cook?
- 12 A Correct.
- 13 Q And why did you go there?
- 14 A I went there in order to get the information.
- 15 Q First, when were you there, do you recall?
- 16 A As near as I can recall, about, - oh, I would say
- 17 August of '72.
- 18 Q All right, sir, and what happened when you went there;
- 19 what did you do?
- 20 A Went there and had a few drinks and delayed long
- 21 enough to get the information for unemployment benefits.
- 22 Q What information are you speaking of?
- 23 A The employment thing, the paper that they have hanging
- 24 on the wall.
- 25 Q All right. Now, who did that?

1 A Well, I detained the waitress while Elgin got the
2 numbers.

3 Q All right, sir. Did you ever make a claim against
4 Pat's Pad in the name of Betty Louise Collins?

5 A I did.

6 Q All right, sir. Let me show you what is marked
7 Government Exhibit Number 243 which is original claim
8 for benefits, the name Betty L. Collins. Below where
9 you see "employer", Pat's Pad, 156 Northampton. You
10 see the date the claim was filed, September '72?

11 A Right.

12 Q Where did you live in September, 1972?

13 A 156 Northampton.

14 THE COURT: Keep your voice up.

15 THE WITNESS: 156 Northampton.

16

17 BY MR. WILLIAMS:

18 Q Mr. Raspberry, will you hold that in your hand and
19 speak into the microphone please.

20 A Yes.

21 Q Where did you live in September, 1972?

22 A 156 Northampton.

23 Q All right, sir. Now, I direct your attention to the
24 bottom where it says "Claimant sign here" and the name
25 Betty Louise Collins appears. Do you know who signed

1 that?

2 A Yes, I do.

3 Q Who did?

4 A My wife.

5 Q Cainetta?

6 A . Right.

7 Q All right. Can you tell us who filled in the rest of
8 the form?

9 A I did.

10 Q All right, sir. Now, under the name Betty L. Collins,
11 you see the address 71-8 Wilson, Lackawanna?

12 A Right.

13 THE COURT: It is all right. The jury can hear.
14 About this far, Mr. Raspberry, as you are
15 holding it now, because if you get it right
16 up to your mouth then we get a lot of
17 distortion, so about three inches or so
18 away.

19 THE WITNESS: All right, sir.

20
21 BY MR. WILLIAMS:

22 Q All right. Did you ever live at 71-8 Wilson Avenue,
23 Lackawanna?

24 A No.

25 Q Did your wife ever live there?

- 1 A No.
- 2 Q How did you happen to use that address?
- 3 A I got the address from Elgin.
- 4 Q Elgin Cook?
- 5 A Right.
- 6 Q All right, sir. Now, have you ever made a claim for
- 7 unemployment benefits, Mr. Raspberry, stating that
- 8 you worked for Harland's Delicatessen?
- 9 A Yes, I did.
- 10 Q Okay. What name did you use?
- 11 A Freddie Rogers.
- 12 Q Is that your name?
- 13 A No, it is not.
- 14 Q All right, sir, and where is Harland's Delicatessen
- 15 located?
- 16 A Masten and Southampton.
- 17 Q All right. Have you ever been in that place before?
- 18 A Yes. I used to trade there.
- 19 Q All right, sir. Were you ever in there in the summer
- 20 or fall of 1972?
- 21 A Yes.
- 22 Q With whom?
- 23 A With Elgin.
- 24 Q What did you do when you went there?
- 25 A Got the information for unemployment benefits.

1 Q Again, what information are you speaking of?
2 A The information as to the unemployment status.
3 Q Is this the same information you spoke of before?

4 A Right.

5 MR. JAY: Objection, your Honor.

6 THE COURT: I will sustain the objection. When
7 you say you got some information, did
8 you write it down?

9 THE WITNESS: Elgin wrote it down.

10 THE COURT: Did you see what he wrote down?

11 THE WITNESS: No, I didn't see what he wrote down.

12 THE COURT: Did you see what he did when he was
13 in there?

14 THE WITNESS: Yes. He looked at this particular
15 thing on the wall and wrote the informa-
16 tion down.

17 THE COURT: When you say "thing on the wall",
18 there is some kind of certificate or other
19 paper on the wall?

20 THE WITNESS: Right. An employment certificate,
21 I think he called it, a tax certificate
22 or something.

23 THE COURT: All right. Go ahead, Mr. Williams.
24
25

1 BY MR. WILLIAMS:

2 Q Let me show you what is marked as Government Exhibit
3 Number 250, at the top Freddie Rogers, 173 Northampton,
4 the employer Harland's Delicatessen, 156 Northampton,
5 filed October 20, 1972. Where did you live at that
6 time?

7 A 156 Northampton.

8 Q All right, sir. At the bottom where it says "Claimant
9 sign here", there is a name Freddie Rogers. Can you
10 tell us who signed that?

11 A I did.

12 Q All right. Did you receive any checks from the New
13 York State Department of Labor as a result of making
14 that claim?

15 A Yes, I did.

16 Q All right. What did you do with the checks?

17 A Cashed them.

18 Q All of them?

19 A All of them.

20 Q All right, sir. Now, as a result of filing that claim
21 against Harland's Delicatessen, Mr. Raspberry, did
22 you receive any mail from the State of New York?

23 A Yes.

24 Q All right. Do you remember what you received?

25 A A white envelope, to my understanding, a verification

1 of employment.

2 Q Well, all right. You received a white envelope?

3 A Right.

4 Q What did you do with it?

5 A Delivered it to Elgin.

6 Q Elgin Cook?

7 A Correct.

8 Q All right. When was the first time, Mr. Cook, you made
9 any - -

10 THE COURT: Mr. Raspberry.

11 BY MR. WILLIAMS:

12 Q I am sorry. Mr. Raspberry, did you ever make a claim
13 for unemployment benefits in the name of Bill Brown or
14 James Turner?

15 A I did.

16 Q When was that?

17 A That was about March of '72.

18 Q All right, sir, and can you tell us how that came
19 about?

20 A Well, I was talking to Elgin and he gave me the - -

21 Q When was this?

22 A This was March of '72, the day before I made the claim.

23 Q All right, sir, and tell us what, if anything, he said
24 and what, if anything, you said.

25 A I may have talked to him before concerning this, but I

1 can't remember, but this particular day he gave me
2 the information as to how to go about this thing, to
3 go down and fill out the forms and after that I begin
4 to get checks after signing each time.

5 Q What name did you use?

6 A James Turner and Bill Brown.

7 Q All right. How did you happen to use those names?

8 A Well, one of them, I can't recall which one, was given
9 to me by Elgin. The other one was a security card
10 that I had obtained myself.

11 Q All right, sir, and who did you make those claims
12 against? What was the name of the employer?

13 A Steel City Collision.

14 Q All right, sir, and what address did you use for
15 Steel City Collision?

16 A I disremember the address, but it was on Michigan.

17 Q In Buffalo?

18 A In Buffalo.

19 Q How did you happen to use that address?

20 A I got the address from Elgin.

21 Q All right, sir. Let me show you, Mr. Raspberry, what
22 is marked as Government Exhibit Number 261. It has the
23 name Bill Brown, address 179 Northampton. Below
24 "employer", it says Steel City Collision, 1202 Michigan
25 Avenue. At the bottom, it says "Claimant sign here",

1 and there is the name Bill Brown. Do you know who
2 signed that?

3 A I signed that.

4 Q All right, sir. Let me show you now what are called
5 pay certification forms, Government Exhibit 262 through
6 265. Do you see a signature on each of those?

7 A I do.

8 Q Who signed that?

9 A I did.

10 Q All right. I now show you five checks, Exhibits 266
11 through 270, payable B. Brown, 179 Northampton Street.
12 Whose signature appears on the back of each of those
13 checks?

14 A My signature.

15 Q All right. Do you remember how many checks you received
16 in the name of Bill Brown?

17 A No, I don't.

18 Q All right. Did you keep all of the checks?

19 A Yes, I kept them all.

20 Q I now show you what is marked Government Exhibit
21 Number 285, original claim for benefits, the name
22 James Turner, 173 Northampton. Down here "employer"
23 Steel City Collision, 1202 Michigan, Buffalo. There
24 is a name signed here, claimant, James Turner. Do
25 you know who signed that?

- 1 A I signed that.
- 2 Q All right. I now show you what are pay certification
3 forms, Exhibits Number 286 through 289. Do you see
4 a signature on each of those?
- 5 A I do.
- 6 Q Who signed that?
- 7 A I did.
- 8 Q All right. Now, I show you four checks, Government
9 Exhibits 290 through 293, payable to J. Turner, 173
10 Northampton Street. Look at the back and tell me who
11 signed the name on the back.
- 12 A I did.
- 13 Q All right. Do you know how many checks you received
14 in the name of J. Turner?
- 15 A No, I don't.
- 16 Q All right, sir. Did you cash all those checks?
- 17 A Yes.
- 18 Q Did you keep all the money?
- 19 A Yes, I did.
- 20 Q Mr. Raspberry, I want to show you a number of checks
21 that are a part of Government Exhibit Number 272.
22 Will you take a look at those checks. Okay. Who were
23 they payable to?
- 24 A S. Crooks.
- 25 Q What address?

- 1 A 183 Northampton, Apartment 5.
- 2 Q All right. Where did you live during '71 and early
3 '72?
- 4 A 183 Northampton.
- 5 Q All right, sir. Have you seen those checks before?
- 6 A Yes, I have.
- 7 Q All right. What, if anything, did you do with them?
- 8 A I delivered them to Elgin.
- 9 Q Elgin Cook?
- 10 A Yes.
- 11 Q All right. Mr. Raspberry, did you ever receive any
12 mail addressed to the Bee Gee Arco Service Station?
- 13 A Yes, I did.
- 14 Q All right, and what did you do with that mail?
- 15 A Delivered it to Elgin.
- 16 Q All right, sir. Did you ever make a claim on Bee Gee
17 Arco Service Station?
- 18 A I did.
- 19 Q All right. What name did you use?
- 20 A J. E. Willis.
- 21 Q All right. Do you remember where you made that claim?
- 22 A Yes, I do.
- 23 Q Where?
- 24 A In Niagara Falls.
- 25 Q All right, and how did you get down to Niagara Falls?

- 1 A I went down there with Elgin.
- 2 Q All right. Let me show you what is marked as Government
- 3 Exhibit Number 318, claim for benefits; name James E.
- 4 Willis, 404 7th Street, Niagara; employer, Bee Gee
- 5 Arco, 183 Northampton. Who lived at 183 Northampton?
- 6 A I did.
- 7 Q All right. Where it says "claimant sign here", who
- 8 signed that?
- 9 A I did.
- 10 Q All right. Did you ever live at 404 7th Street?
- 11 A No, I didn't.
- 12 Q All right. How did you happen to use that address?
- 13 A It was furnished to me by Elgin.
- 14 Q Pardon me?
- 15 A It was furnished by Elgin.
- 16 Q All right. Did you ever receive any checks in the
- 17 name of James Willis?
- 18 A Yes, I did.
- 19 Q What did you do with those checks?
- 20 A Cashed them.
- 21 Q All right. Mr. Raspberry, I am now going to show you
- 22 what is marked Government Exhibit Number 317. I call
- 23 your attention to a Xerox copy of an application for
- 24 social security number in this file. Do you see the
- 25 signature at the bottom?
- A Right.

1 Q Whose signature is that?

2 A That's my signature.

3 Q All right, and do you give an address as 660 Monroe
4 Street, Fairmont, Virginia?

5 A Correct.

6 Q Have you ever lived there?

7 A No.

8 Q How did you happen to use that address?

9 A I was told by Elgin to use that address.

10 Q Were you ever down in Fairmont, Virginia?

11 A Yes.

12 Q All right. How did you get down there?

13 A I went down with Elgin and I have been down on my own.

14 MR. CASEY: What number was that, please?

15

16 BY MR. WILLIAMS:

17 Q It is part of Exhibit 317. Do you know anyone by the
18 name of Willie Davis?

19 A No, I don't.

20 Q All right, sir. Let me show you part of Exhibit Number
21 308, which are two checks payable to W. M. Davis,
22 3416 Highland Avenue, Niagara Falls. Do you see those?

23 A Yes.

24 Q Do you see the second endorsement on the back of each
25 of those?

- 1 A Yes.
- 2 Q And what is the name on the second endorsement?
- 3 A James E. Willis.
- 4 Q Do you know who signed that?
- 5 A I did.
- 6 Q All right. Do you see the name of the first endorse-
7 ment?
- 8 A I do.
- 9 Q Is that W. M. Davis?
- 10 A Correct.
- 11 Q All right. Were those first endorsements signed in your
12 presence?
- 13 A They were.
- 14 Q Who signed them?
- 15 A Elgin.
- 16 Q Elgin Cook?
- 17 A Correct.
- 18 Q Did you ever receive checks in the name of J. M. Clark?
- 19 A Not that I can recall.
- 20 Q All right. Let me show you part of Exhibit Number 409.
21 There are three checks, four checks, the name J. M.
22 Clark, address 183 Northampton, Apartment 5.
- 23 MR. ABRAMOWITZ: Objection, your Honor. I think the
24 witness just said he didn't recall any-
25 thing like that.

1 MR. WILLIAMS: I believe he said he didn't recall,
2 yes.

3 THE COURT: Put another question, Mr. Williams.
4

5 BY MR. WILLIAMS:

6 Q All right. During 1971 and '72, did you live at
7 183 Northampton Street?

8 A I did.

9 Q All right. What apartment number?

10 A Apartment Number 5.

11 Q All right. Did you ever receive any mail there that
12 wasn't addressed to you?

13 A Yes, I received lots of mail wasn't addressed to me.

14 Q All right.

15 THE COURT: Do you mean, - all right, go ahead.

16 BY MR. WILLIAMS:

17 Q Let me show you part of Government Exhibit Number 408
18 which is a series of checks, J. M. Clark; have you
19 ever seen those before?

20 MR. JAY: I object to the form of the question,
21 using it to refresh his recollection.

22 THE WITNESS: If I seen them, I can't recall.

23 THE COURT: Just a minute. I will overrule
24 the objection.

25 THE WITNESS: I can't recall that name J. L. Clark.

1 BY MR. WILLIAMS:

2 Q You don't recall it?

3 A No.

4 THE COURT: Was there a man lived there by that
5 name?

6 THE WITNESS: No, no man lived there by that name.
7

8 BY MR. WILLIAMS:

9 Q Mr. Raspberry, what, if anything, did you do with the
10 money that you received from the State of New York as
11 a result of filing some of these claims?

12 A I kept the money I received from the State of New York.

13 Q All of it?

14 A All of it.

15 Q Okay. Now, Mr. Raspberry, have you ever been to the
16 unemployment office at 200 Franklin Street?

17 A Yes, I have.

18 Q Have you ever been to the second floor of that office?

19 A Yes.

20 Q All right. Do you recall when you went to the second
21 floor of the unemployment office on Franklin Street?

22 A Yes, I do.

23 Q About when was that?

24 A I would say about February or March of '72.

25 Q All right. What was your purpose in going there?

1 A I went there with Elgin.

2 Q Elgin Cook?

3 A Right.

4 MR. JAY: Objection, not responsive.

5 THE COURT: What was your purpose?

6 THE WITNESS: I went there to see Mr. Stewart,
7 I think his name is.
8

9 BY MR. WILLIAMS:

10 Q All right. Did you go with someone?

11 A I went with Elgin.

12 Q All right. What was your purpose in going there to
13 see Mr. Stewart?

14 A He asked me to go with him.

15 Q Who did?

16 A Elgin did.

17 Q All right. Do you remember what time you got there?

18 A I would say about midday.

19 Q When?

20 A About midday.

21 Q All right, and who did you see on that occasion, do
22 you recall?

23 A This particular fellow, I don't know him, but he was
24 in Mr. Stewart's office.

25 Q All right. When you saw this other fellow, was Mr.

1 Stewart there?

2 A No, he wasn't.

3 Q Okay. Was there any conversation that took place?

4 A Yes.

5 Q All right. Did you say anything?

6 A . No, I didn't.

7 Q All right. Did Mr. Cook say anything?

8 A Yes.

9 Q All right. What, if anything, did he say?

10 A He told this fellow to quit harassing his mother or

11 he would give this scheme to every prostitute and

12 junky in Buffalo.

13 Q All right. Did you ever see Mr. Stewart that day?

14 A Yes.

15 Q When was that?

16 A Well, this fellow what was in there, he went and got

17 Mr. Stewart.

18 Q All right, and what happened after this fellow went

19 and got Mr. Stewart?

20 A Elgin repeated the same thing to him.

21 Q What you just told us before?

22 A Right.

23 Q Okay. Mr. Raspberry, have you ever been to 271 Southampto

24 Street?

25 A Yes, I have.

- 1 Q All right. Can you describe the structure that is at
2 271 Southampton Street?
- 3 A Yes, it is a two-family home.
- 4 Q All right. Directing your attention to 1971 and 1972,
5 can you tell us who lived there then?
- 6 A . Rose McClendon lived there in '71.
- 7 Q All right. Have you ever been to 387 Woodlawn?
- 8 A Yes, I have.
- 9 Q Can you describe that structure for us?
- 10 A It is a two-story house.
- 11 Q All right. Do you know who lived there in 1971 and '72?
- 12 A Rose lived there in '72.
- 13 Q All right. Have you ever been to 379 Emslie?
- 14 A Yes.
- 15 Q How many times?
- 16 A Oh, on numerous times.
- 17 Q Have you ever been inside?
- 18 A Yes, I have.
- 19 Q Who lives there?
- 20 A Elgin Cook.
- 21 Q All right. Can you describe 379 Emslie?
- 22 A It's a one-story house with a basement.
- 23 Q All right. Are there any apartments there?
- 24 A No, there isn't.
- 25 Q All right. Have you ever been to 83 Brunswick Boulevard?

1 A Yes, I have.

2 Q And can you describe that, please?

3 A It's a two-family home.

4 Q All right. Do you know who lives there?

5 A Yes, I do.

6 Q Who?

7 A Mary Jean Askew.

8 THE COURT: Excuse me. Who lives there?

9 THE WITNESS: Mary Jean Askew.

10

11 BY MR. WILLIAMS:

12 Q Now, Mr. Raspberry, as a result of making some of
13 these claims that you indicated you did, did you ever
14 pay any sum of money for contributions or taxes?

15 A I paid for taxes, not for contributions.

16 Q What kind of tax?

17 A Tax on the employment claim.

18 Q All right. Who did you pay?

19 A I give the money to Elgin.

20 Q How much did you give to Elgin?

21 A \$250 on each claim.

22 Q All right. Do you remember how many claims you filed?

23 A No, I don't.

24 MR. WILLIAMS: All right. I have no more questions.

25 THE COURT: I think that perhaps the best way

1 to proceed, - are you finished with your
2 questions, Mr. Williams?

3 MR. WILLIAMS:

Yes, I have.

4 THE COURT:

5 Ladies and gentlemen, we will be in
6 recess until 2:00 o'clock, at which time
7 we will continue with cross examination
8 of Mr. Raspberry. You be back at that
9 time, Mr. Raspberry. Spectators, stay
10 in your places while the jury goes out.
11 Mr. Williams and lawyers, I would like to
12 talk to you for a minute.

13 MR. WILLIAMS:

Yes.

14 THE COURT:

15 Mr. Raspberry, you may also be
16 excused.

17 (Jury escorted from the courtroom.)

18 THE COURT:

19 One thing I wanted to check on, you
20 have, Mr. Jay, all the material which you
21 should have under the rules?

22 MR. JAY:

Your Honor - -

23 THE COURT:

24 I should put that question to Mr.
25 Williams.

MR. JAY:

I don't have anything on the criminal
record as to this gentleman.

1 MR. WILLIAMS: The criminal record I have available
2 for Mr. Jay.
3 THE COURT: Is there any 3500 material?
4 MR. JAY: Nothing.
5 MR. WILLIAMS: No, there is not, by virtue of the
6 fact that he has never testified before
7 the grand jury and has never given anyone
8 any statements.
9 MR. JAY: Except Mr. Stewart,
10 THE COURT: I mean for the record, this is what
11 I am interested in.
12 MR. WILLIAMS: No, for the record, I have nothing.
13 THE COURT: You sat with him, sat down with him
14 to prepare his testimony?
15 MR. WILLIAMS: Mr. Traub and I have certainly spent
16 time preparing for his testimony, but he
17 signed no statements. We did not show him
18 anything and ask whether or not, - that
19 is true. I made my scratch notes as a
20 result of talking to him. If defense
21 counsel wants that, I will be happy to
22 give it to them. There is really no
23 3500 material.
24 THE COURT: Did he testify before any grand jury?
25 MR. WILLIAMS: Never testified, never gave us any

1 statements.

2 THE COURT: What about to the State Unemployment,
3 did he ever give any statements to them
4 during the course of this?

5 MR. TRAUB: Not that I am aware of.

6 MR. WILLIAMS: It may have been as a result of the
7 prior situation in Mayville, as a result
8 of the investigation, your Honor, by the
9 State Authorities which led to an indict-
10 ment of George Raspberry and Elgin Cook
11 in Mayville which was a limited situation.
12 It pertained to a claim upon one employer
13 when he used the name, I think, Lester
14 J. Hooker. There was a statement there
15 that related to that particular situation.
16 That has nothing to do with this.

17 THE COURT: That is not in this indictment.

18 MR. WILLIAMS: It has nothing to do with this indict
19 ment.

20 THE COURT: Mr. Jay, anything before we break?

21 MR. JAY: On the statements of Mr. Williams,
22 it is nothing we are entitled to. There-
23 fore, we will go along with what we have.

24 THE COURT: You have the record of Mr. Raspberry's
25 prior convictions?

1 MR. WILLIAMS:

Yes, I believe Mr. Jay has it.

2

I had it here a moment ago.

3

THE COURT:

All right. We will take a break

4

then until 2:00 p.m.

5

6

(Recess taken at 12:50 p.m.)

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1 charge of mailing them for that particular day. Sometimes
2 they rotate these people.

3 Q Fine. That would be an employee of the New York State
4 Department of Labor?

5 A Correct.

6 Q That form for verification of employment would not be
7 mailed by the claimant, is it, sir?

8 A Never.

9 Q Now, you state that at some time during the process,
10 after this form is mailed back to the local office,
11 that the claimant would come in the following week to
12 certify various matters; that is, to certify the four
13 questions, I believe, did you work, were you able to
14 work, did you look for work, did you refuse work, and
15 that would be a certification that the claimant was still
16 unemployed and entitled to insurance benefits, is that
17 correct?

18 A Correct.

19 Q Would that be done in person, sir?

20 A Always.

21 Q It cannot be done when - -

22 A I am sorry. With the current load that the local offices
23 have, they may come in every other week and be given a
24 card to mail in on the other week, but it depends on the
25 load of the particular office.

1 Q At the period of time in question, sir, in 1970 or 1971,
2 the time period that you refer to on your direct examina-
3 tion, was it the procedure that the certification that
4 a claimant was still unemployed and entitled to benefits,
5 done by the person at the local office?

6 A The forms that this person signed would indicate that
7 he or she was in the office.

8 Q And that they were not mailed inot the office?

9 A Correct.

10 Q So that if there were any claim that between February
11 14, 1971 and April 30, 1972 that a person mailed to the
12 New York State Unemployment Insurance Fund a certification
13 that she was still unemployed and entitled to insurance
14 benefits, that would not be correct?

15 A At that time that would have to be in person.

16 Q Right, it would not have been done by mail.

17 A No, sir.

18 Q Now, you state that after that certification is made,
19 the pay orders are mailed to Albany, correct, am I correct?

20 A Correct.

21 Q And we are assuming that those pay orders are also mailed
22 out by an employee of the New York State Department of
23 Labor?

24 A That's right.

25 Q That is not done by the claimant?

1 A No, sir.

2 Q That is not done at the claimant's request but as part
3 of your normal procedure in handling these claims?

4 A Correct.

5 Q All right, and the claimant in no way supplies any
6 envelope or postage for the transporting of any of
7 these forms or the transporting of the checks, is that
8 correct?

9 A No, sir.

10 Q That is done also by the New York State Department of
11 Labor?

12 A Yes, sir.

13 Q You do not request of a claimant that the claimant sign
14 something directing the New York State Department of
15 Labor as to how claims should be handled or how they
16 should be sent, checks should be sent, do you?

17 A When a person files the claim they give us the address
18 to which to mail them to and each week they certify
19 they are still at that address unless they notify us
20 otherwise.

21 Q Fine. Would you now answer my question. Do you have
22 them sign anything that would indicate that they are
23 giving you permission to cause the mails to be used?

24 A I can't answer that question "yes" or "no". There was
25 no other way they could get a check.

1 Q Fine. Thank you, sir. I would ask that that last remark
2 be stricken, your Honor, as being non-responsive.

3 THE COURT: Overruled.

4
5 BY MR. LAMANTIA:

6 Q On the pay order form, sir, showing you Government
7 Exhibit 10 as one example of pay order form, there is
8 nothing on the pay order form signed by the claimant
9 that indicates that the mail will be used, is there, sir?

10 A It doesn't say that.

11 Q Thank you. Now, with respect to the, - so much for the
12 general procedure, sir. The, - as far as the entire
13 general procedure that you outlined with respect to a
14 claimant for unemployment insurance benefits as the
15 system existed in the time period that we are talking
16 about, - that is, between December, - I am sorry, January
17 of '70 and December of '72 there is not one form here
18 that is mailed by the claimant, is there?

19 A No sir, not in this claim.

20 Q And would that, - with respect to the claim of Kathryn L.
21 Willis, there is not one form in that file that is
22 Government's Exhibit 1, the folder, that was mailed by
23 the person claiming to be Kathryn L. Willis?

24 A No, sir.

25 Q Now, with respect to the 330 form of Kathryn L. Willis, is

1 Q Now, also the verification of unemployment which would
2 be in this case, LO 406.1E, those are also filled out
3 in person in the presence of the claims taker?

4 A Correct.

5 Q And the claims taker has a face to face confrontation
6 with the person signing that. Is there anything on
7 those forms 406.1 to indicate the sex of the person
8 who signed that other than the man's name "Willie"?

9 A No.

10 Q And once again, can you tell by looking at these
11 LO 406.1 forms which are the pay orders that Mr.
12 Williams referred to in his direct examination of you,
13 whether those were filled out in person or were mailed?

14 A They were filled out in person.

15 Q And can you go through each one?

16 A They were all filled out in person.

17 Q And for the record, sir, then each and every one of
18 Government's Exhibits 79 through 87, which are LO 406.1
19 forms were filled out in person and not mailed?

20 A Correct.

21 Q Now I show you Government's Exhibit 78 which is the
22 request for employment and wage data. At the bottom
23 of this form, the last line, there are certain blanks
24 under the term "characteristics". There is some matters
25 enclosed are written in ink. Can you tell us, sir, who

1 Q. Yes.

2 A. Yes.

3 Q. And what is the name of the third endorsement?

4 A. Willie S. Middleton.

5 Q. All right, sir. Are all those documents a part of the
6 file folder for Terry Mitchell marked Government Exhibit
7 Number 198?

8 A. They are.

9

10 MR. WILLIAMS: Thank you. I have no more questions
11 on this file.

12 MR. JAY: No questions.

13 THE COURT: No questions, all right. Next
14 folder, Mr. Williams.

15 MR. LAMANTIA: I have some.

16 THE COURT: Mr. Lamantia, I am sorry.

17

18 CROSS EXAMINATION BY MR. LAMANTIA:

19 Q. Mr. Julius, I show you Government Exhibit 191. Is that
20 a pay order form?

21 A. It is.

22 Q. And, sir, is that a Department of Labor form, New York
23 State Department of Labor Form LO 406.1?

24 A. Correct.

25 Q. Was that form, sir, made out at the office of the

1 Department of Labor?

2 A. It was.

3 Q. Was that form mailed, sir?

4 A. From the office to Albany.

5 Q. No. Was it mailed by the person claiming to be Terry
6 Mitchell?

7 A. No, sir.

8 Q. Did Terry Mitchell or any other person that was a
9 claimant mail that card in to the Department of Labor?

10 A. No, sir.

11 Q. That was given by a claims taker to the person who was
12 present in the office and signed by that person in that
13 time?

14 A. Correct.

15 Q. No claimant mailed Government Exhibit 191 which is
16 Form LO 406.1?

17 A. No, sir.

18 Q. I show you Government Exhibit 192 which is a claim for
19 benefit payment, Form LO 406.1. Was that form mailed by
20 any claimant, sir?

21 A. No, sir.

22 Q. Was it mailed, - that was done in person?

23 A. Correct.

24 Q. I show you Government's Exhibit 193 for identification,
25 another pay order and the name Terry Mitchell. Was that

1 form mailed by the claimant to the Department of Labor?

2 A. No, sir.

3 Q. It was done in person?

4 A. Right.

5 Q. I show you Government Exhibits 194, 195 and 196 which
6 are also all Department of Labor forms LO 406.1. Could
7 you look at each of those forms, sir, and tell me if
8 the claimant named on there or any other claimant mailed
9 those forms to the Department of Labor?

10 A. No claimant would have mailed them to the Department of
11 Labor.

12 Q. That goes for each and every document that is a Form
13 LO 406.1?

14 A. Correct.

15 Q. So that there is no question, sir, Mary Jean Askew nor
16 anyone using the name Terry Mitchell mailed or caused
17 to be mailed to the New York State Department of Labor
18 those forms LO 406.1 certifying that that person was
19 unemployed and continued to be unemployed?

20 A. Correct.

21

22 MR. LAMANTIA: That is all I have.

23 THE COURT: Anyone else?

24 MR. JAY: No questions.

25

1 CROSS EXAMINATION BY MR. LAMANTIA:

2 Q. Mr. Julius, are there any pay orders in this file?

3 A. Possibly in the envelope. There is more here also.

4 Q. All right, and these are part of the regular file?

5 Could you, Mr. Julius, examine for me the pay orders,
6 Form LO 406.1 for the period between January 12, 1972
7 and June 28, 1972? Do you have those, first of all?

8 A. January 12th and what else?

9 Q. January 12, 1972 and June 28, 1972.

10 A. June 28th, '72?

11 Q. Yes.

12 A. There would be no week ending date June 28th.

13 Q. Well, what would be the closest one?

14 A. 6-25.

15 Q. All right. June 25, 1972, you have that?

16 A. Right.

17 Q. Do you have the ones that precede that up to January 12,
18 1972?

19 A. January 12th would either be the week ending 1-9.

20 Q. All right. Now, of the pay orders that you have between,
21 not just those two, the ones that go in between from
22 January 9, 1972 to what date now, June --

23 A. Week ending 6-25-72.

24 Q. Could you look at each and every form LO 406.1 between
25 those two dates and tell me whether any one of those forms

1 LO 406.1 was mailed or caused to be mailed by the
2 claimant purporting to be J. L. Mitchell or Jerry L.
3 Smith, I am sorry?

4 A. We have to get them all in order first. None were
5 mailed by the claimant.

6 Q. So that out of that six-month period you have examined
7 each and every pay order form LO 406.1 and none were
8 claimed or purported to be mailed by the claimant?

9 A. Correct.

10

11 MR. LANANTIA: That is all I have.

12 THE COURT: Any other questions?

13 MR. JAY: No questions.

14 MR. WALSH: No questions.

15

16 DIRECT EXAMINATION BY MR. WILLIAMS: (Resumed)

17 Q. Mr. Julius, were each of those forms LO 406.1 nevertheless
18 mailed by the Buffalo Office of the New York State
19 Department of Labor to the Albany Office?

20 A. All of them.

21 Q. I see. I now show you Government Exhibit 228 for
22 identification. What is that?

23 A. This is Joe Lee Smith, Social Security Number 068-50-2310,
24 at 308 High Street.

25 Q. Again, is that your file folder for that individual

1 A No, sir.

2 Q All right. I assume then it may be filled out and
3 brought back?

4 A Correct.

5 Q All right, sir. Now, directing your attention to
6 the LO 330, the verification form in that file folder,
7 on there, there is an indication of the sex, correct?

8 A On the LO 12.11, yes.

9 Q Where does that information come from?

10 A It is a visual observation when the person presents
11 this form 330 to the claims taker.

12 Q All right, and the observation is made at the time the
13 claim is filed?

14 A Correct.

15 MR. WILLIAMS: I have no more questions.

16 MR. LaMANTIA: Your Honor, may I have a conference
17 at the sidebar?

18 THE COURT: Mr. Williams, Mr. Knisley.

19
20 (Sidebar conference held between
21 the Court, Mr. Williams and Mr. LaMantia
22 as follows:

23
24 MR. LaMANTIA: Your Honor, once again we have a
25 health problem with the defendant, Mary

1 Jean Askew. We had a conference in
2 chambers Friday. She advises me she
3 hasn't seen a doctor between Friday
4 and today and is having difficulty
5 breathing and wants to be taken to the
6 hospital. We are presently on Count 36.
7 My records indicate we have covered
8 all other counts relating to this
9 defendant except 58 and 59.

10 THE COURT:

Mr. Robinson, could you step up,
11 please?

12 MR. LaMANTIA:

There is no real necessity for
13 her to be present during much of the
14 testimony that is going to go on.

15 MR. WILLIAMS:

I agree. I anticipate later this
16 afternoon getting to these regiscope
17 with the employees of Regiscope
18 Distributors and ten of those regiscope
19 relate to her.

20 THE COURT:

Does she want to stay in Court?

21 MR. LaMANTIA:

She wants to go to the hospital.

22 THE COURT:

Would you check with Mr. Cioffe.
23 Mrs. Askew said she did not see a doctor
24 over the whole weekend. I don't know
25 whether there is any need for it or not.

1 but of course, check with Mr. Cioffe
2 and see whatever the arrangement is.

3 DEPUTY UNITED STATES MARSHAL ROBINSON: I will check with
4 Mr. Hoffarth. Mr. Cioffe is off.

5 THE COURT: We will look into that.

6 MR. LaMANTIA: Okay.

7 THE COURT: But again, the doctor may say
8 "There is nothing we can do". I do not
9 know, but we will look into it.

10 MR. LaMANTIA: I appreciate that.

11 THE COURT: Does she want to stay in the court-
12 room now?

13 MR. WILLIAMS: If I recall, she has a serious
14 case of asthma and is breathing heavily
15 from time to time.

16 THE COURT: I know that. She may be excused
17 then, but the thing is all we can do,
18 since she isn't at the jail now, we
19 will want her here this afternoon, I
20 suppose.

21 MR. LaMANTIA: I guess the problem was there wasn't
22 a doctor there over the weekend.

23 THE COURT: We will check into it. Why not
24 have Mrs. Askew go upstairs for the
25 present and we will talk about the

1 doctor problem.

2 (Sidebar conference concluded.)

3
4 MR. WILLIAMS:

I have no more questions.

5 THE COURT:

6 Mrs. Askew, ladies and gentlemen,
7 is troubled by asthma and as I have
8 explained before that any defendants
9 that want to step out, they may. The
10 testimony we are hearing now does not
11 relate, the Government and her counsel
12 agree that it really doesn't relate to
13 her case particularly so that we have
14 excused her from being in the courtroom.

15 (The defendant, Mary Jean Askew,
16 escorted from the courtroom.)

17
18 THE COURT:

Anything further on this folder,
19 any questions?

20 MR. JAY:

No questions.

21 THE COURT:

No questions, all right.

22
23 BY MR. WILLIAMS:

24 Q I now show you, Mr. Julius, Government Exhibit 305.

25 Is that your file folder, sir?

1 same thing to Mr. Stewart.

2 Q. That is what you have just told us just a few brief
3 moments ago?

4 A. Correct.

5 Q. All right, sir. Was there any other conversation that
6 day between you and Mr. Cook or any others in your
7 presence?

8 A. Mr. Cook and Mr. Raspberry indicated that they alone --

9 Q. No, what was said?

10 A. I am sorry. Mr. Cook and Mr. Raspberry said that they
11 alone --

12
13 MR. JAY: Objection, your Honor. Did they
14 say it in unison, in a chorus, or what?

15 THE COURT: Mr. Julius, try to indicate which
16 man said what.

17 THE WITNESS: To the best of my recollection, Mr.
18 Cook did most of the talking and Mr.
19 Raspberry did the agreeing, but Mr. Cook
20 said that he and Mr. Raspberry were the
21 sole operators of this plan and they
22 would talk to our chief investigator who
23 was Mr. Sitkin at the time and a date
24 for an arrangement was set up at a future
25 date. I don't know the date. I was not

1 THE COURT:

I think it might be better to have
him come back at 2:00. In the meantime,
as long as we are here, why not make
this statment, that Mrs. Askew this
morning when she came into court before
the jury was here, it appeared she was
apparently in some distress, so Mr.
Lamantia and the marshal had a conversa-
tion with her. As a result of that, the
marshal has made arrangements for Mrs.
Askew to go to Meyer Memorial Hospital
this morning for examination. Mr.
Lamantia, as far as your conversation or
meeting is there anything further ought
to be said now?

16 MR. LAMANTIA:

No. She has gone to the hospital.
She is going to be examined in the
emergency room. A doctor will give a
report as to her condition and what he
feels the diagnosis is and the marshal
says he will advise the Court immediately
upon their return.

23 THE COURT:

As far as proceeding here today, it
seems that unless there was compelling
reason that we should go ahead with the

1 trial. We have many points at issue,
2 some relating to her and perhaps needing
3 her presence, and some not, and unless
4 there is a special reason we should
5 continue with the testimony.

6 MR. LAMANTIA: I have no objection to that.

7 THE COURT: Mr. Hanley will cover what?

8 MR. WILLIAMS: 18 Eagan Drive. He is with the
9 Water Authority. I won't have any
10 witness relating to Mary Jean Askew this
11 morning.

12 THE COURT: All right.

13
14 (Side bar conference concluded.)
15

16 BY MR. WILLIAMS:

17 Q. Mr. Hanley, by whom are you employed, sir?

18 A. By the Erie County Water Authority.

19 Q. What is your position with the Water Authority?

20 A. Business Office Manager.

21 Q. How long have you been the Office Manager for the Water
22 Authority?

23 A. Seventeen years.

24 Q. All right, sir. Mr. Hanley, did you produce and bring
25 with you today pursuant to subpoena certain records

1

1

PROCEEDINGS:

December 23, 1975, 1:30 p.m.

2

APPEARANCES:

As before noted.

3

(All defendants present except

4

Mary Jean Askew)

5

(Jury not present.)

6

7

THE COURT:

Mrs. Askew has been admitted to

8

the hospital. It would be best if,

9

especially if you are going to have

10

photographic identification, or anything

11

like that, that she be here when you

12

have testimony along that line. You

13

have the man from Regiscope?

14

MR. WILLIAMS:

Yes. The testimony is, your

15

Honor, the Regiscope man is not going

16

to identify any photographs as being

17

Mary Jean Askew. He will simply testify

18

as to how they were developed, what

19

the picture depicts in terms of the

20

top portion of the check and the bottom

21

portion of the picture is the individual

22

cashing that particular check. As I

23

understand the Court's ruling from a

24

few days ago when I had Mamie Calhoun

25

on the stand, that the pictures depict

1 MR. WALSH: Thank you.

2 THE COURT: Anything further?

3 MR. WILLIAMS: I have nothing further.

4 THE COURT: Thank you, Mr. Mack.

5 MR. WILLIAMS: Thank you, Mr. Mack. Your Honor,

6 other than Mr. Ruocco, I have several

7 witnesses who will be very short.

8 THE COURT: Why not start with , - what is

9 his name?

10 MR. WILLIAMS: Ruocco, from the Regiscope.

11 THE COURT: Let us begin with him.

12 MR. LAMANTIA: Your Honor, I will note on the

13 record my objection to any testimony

14 with respect to the defendant - -

15 THE COURT: I understand he is going to

16 testify about other defendants.

17 MR. WILLIAMS: Well, it would also relate to - -

18 THE COURT: Can't we take the part that has

19 to do with the others now?

20 MR. WILLIAMS: Yes, we can do that.

21 THE COURT: Certainly. Have him on the stand.

22 Mrs. Askew has been excused by the Court,

23 ladies and gentlemen. Have the witness

24 come in, Mr. Anderson. She is bothered

25 by this asthmatic condition, ladies and

gentlemen, so that we have heard testimony here which relates generally to the case, but now I believe we are coming to a point where Mr. Ruocco's testimony, - he is not there?

MR. WILLIAMS:

No.

THE COURT:

Mr. Williams, would you search?

Evidently there are several people out there. Maybe they are some of your other witnesses.

MR. WILLIAMS:

Yes.

THE COURT:

That some of Mr. Ruocco's testimony will have to do directly with Mrs. Askew and probably we will have to wait until she can be in Court before we will listen to that.

MR. WILLIAMS:

The Marshal is going to check downstairs in my office, your Honor.

THE COURT:

Why not call down, Mr. White?

THE CLERK:

What is your number?

MR. WILLIAMS:

3638.

THE COURT:

He would be where?

MR. WILLIAMS:

In the reception area.

THE COURT:

Call the reception area, 3479.

MR. WILLIAMS:

Any number will ring her.

1 Mr. Hoffarth and the hospital to see what
2 can be done about the whole problem.

3 MR. LAMANTIA:

4 Your Honor, while the jury is not
5 here, there was some discussion off the
6 record and I just wanted to note on the
7 record that since Mary Jean Askew is
8 still in the hospital, is not present
9 today and I understand Mr. Williams
10 intends to call Mr. Ruocco from the
11 Regiscope Company to present some exhibits
12 that are allegedly photographs of the
13 Defendant Mary Jean Askew. She isn't
14 present. She doesn't waive her presence
15 and I don't feel that I can waive her
16 presence on her behalf and I just want
17 to note on the record my objection to
18 that testimony coming in in the absence
19 of the defendant.

20 THE COURT:

All right.

21 MR. WILLIAMS:

22 The testimony itself will not be
23 such as it will connect the Defendant
24 Mary Jean Askew to the photographs. The
25 individual testifying is an employee of
Regiscope Distributors. Regiscope
Distributors maintains these cameras in

1 various different locations, the purpose
2 of which is to take a split picture of
3 the person cashing the check and the
4 check being cashed and he will simply
5 identify them as such as coming from the
6 films and the cameras that they maintain,
7 and that is all. There will be no one --

8 THE COURT:

Mr. Hassett, wait a minute. Mr.
9 Williams, I have heard Mr. Ruocco's
10 testimony and Mr. Lamantia did on Friday
11 about other individuals and I suppose it
12 is going to be similar to that.

13 MR. WILLIAMS:

It would be the same, yes.

14 THE COURT:

15 It does seem to me to be very
16 technical in nature and I will overrule
17 your objection, Mr. Lamantia.

18 MR. LAMANTIA:

Thank you, your Honor.

19 THE COURT:

We had Mr. Ruocco come back some
20 distance and I think it is important
21 that he be permitted to testify today.

22 MR. WILLIAMS:

Thank you.

23 THE COURT:

All right.

24 (Jury returns to the courtroom.)
25

1 MR. LAMANTIA:

Your Honor, I want the record to
2 reflect the absence, the continued absence
3 of Mary Jean Askew and my continued ob-
4 jection.

5 THE COURT:

As I understand, Mr. Williams, we
6 will try to skirt around Mary Jean Askew.

7 MR. WILLIAMS:

Yes. I will eliminate that aspect
8 of the expert witness' testimony. The
9 last word I had from the Marshal about
10 1:00 o'clock or so yesterday afternoon
11 indicated that he thought that she would
12 be released and in the courtroom this
13 afternoon.

14 THE COURT:

Verywell. Have the jury come up.

15
16 (Jury returns to the courtroom.)

17 (All defendants present except Mary
18 Jean Askew.)

19
20 THE COURT:

Ladies and gentlemen, I hope I told
21 you, but we will not be in session this
22 Friday. I will try not to be in session
23 tomorrow. I do not think we will have
24 to be and that is why I thought it might
25 be helpful if we had an earlier start and

1 THE COURT:

Mr. LaMantia.

2 MR. LaMANTIA:

3 I think at this point, your Honor,
4 that I could not adequately cross
5 examine Mr. Sang without my client being
6 present. I think his testimony, although
7 it is the testimony of an expert, is
8 more than just technical in nature and
9 I would like to have the benefit of my
10 client both hearing the testimony and
11 being able to advise me with respect to
12 certain facets of it in order to enable
13 me to cross examine.

14 THE COURT:

15 We have not heard his testimony
16 yet, Mr. LaMantia, so it seems to me
17 if this was a man who, let us say, was
18 going to testify about identification
19 or a conversation, but is there some
20 information you have now which you can
21 relate to me, and maybe you do not want
22 to put it out here before Government
23 Counsel and the witness. Maybe you want
24 to make it at the sidebar, any reason why?

25 MR. LaMANTIA:

I would assume that his testimony
would be along the same lines that he
gave with respect to the other defendants.

1 However, I think his testimony is very
2 vital and crucial to the Government's
3 case against Mary Jean Askew and with
4 respect to tying up the documents and
5 connecting her with the documents and I
6 think that she has the right, as a
7 defendant, to hear that testimony in
8 open court and without her being present
9 and not being able to advise her what
10 is happening and she hasn't waived her
11 presence, I don't feel that I can waive
12 her presence.

13 THE COURT:

I think that we should go ahead
14 and hear Mr. Sang on direct and if there
15 is something unusual comes up, then we
16 will do something else and we will
17 continue to keep your argument in mind,
18 but for the present I will overrule
19 your objection.

20 MR. LaMANTIA:

Just so the record is very clear
21 with respect to my objection, your
22 Honor, and that I am proceeding at the
23 Court's direction in cross examining
24 this witness.

25 THE COURT:

As I say, let us listen to direct

1 I have no more questions.

2 THE COURT:

Any questions?

3 MR. LAMANTIA:

Your Honor, I have a motion to make.

4 It is best to do it outside the presence
5 of the jury.

6 THE COURT:

7 Do you want to do it outside the
8 presence of the jury? Is it a long motion,
9 Mr. Lamantia?

10 MR. LAMANTIA:

Not unduly long.

11 THE COURT:

Why not walk to the sidebar.

12 (Sidebar conference held between
13 the Court, Mr. Lamantia and Mr. Williams
14 as follows:

15
16 MR. LAMANTIA:

17 Your Honor, at this time, I am making
18 a motion for a mistrial on the basis that
19 my client Mary Jean Askew has been absent
20 during the course of this witness' testi-
21 mony. I havenot seen or talked to Miss
22 Askew since she was hospitalized on
23 December 23, which is a week ago today.
24 I feel that this witness' testimony is
25 very crucial to the Government case in
connecting Mary Jean Askew with the

1 commission of these crimes and I feel
2 I cannot intelligently or adequately repre-
3 sent my client in cross examining this
4 witness without her having been present
5 to hear his testimony and so I could con-
6 fer with her. I feel further that my
7 client has been denied her rights under
8 the Sixth Amendment, the right of con-
9 frontation of the witnesses that are giving
10 testimony against her upon which a verdict
11 of guilty may be returned by the jury.
12 I feel after hearing this witness' testi-
13 mony, I must stand mute and not cross
14 examine him although this would be my
15 desire and I am not waiving cross examina-
16 tion. I would desire to cross examine
17 this witness, but I feel that I cannot
18 adequately do it without having conferred
19 with my client and - -

20 THE COURT:

Mr. Williams, what do you suggest?

21 MR. WILLIAMS:

22 Well, first of all, I suggest that
23 this is a motion that Mr. Lamantia, if he
24 wanted to elaborate on it, should have done
25 so before the witness testified the same
as it related to all other defendants.

1 I would state this, certainly if Mr.
2 Lamantia wants to consult with his client
3 prior to cross examination, if the Court
4 so rules, I will have Mr. Sang back on
5 Monday or Tuesday or whenever the court
6 next convenes after Mary Askew is available.
7 I understand now she won't be released from
8 the hospital until about noon time tomorrow.

9 MR. LAMANTIA:

Just a short response to that. I
10 certainly did make it a matter of record.

11 THE COURT:

I think you did. He did not make a
12 motion for a mistrial, but I think Mr.
13 Lamantia clearly indicated his objection
14 to the procedure. I believe that it may
15 be best to have Mr. Sang come back and we
16 will do this on Monday.

17 MR. LAMANTIA:

Your Honor, just so it is clear, I
18 still feel that while he will be back for
19 purposes of cross examination, she hasn't
20 heard his direct examination.

21 THE COURT:

Of course, you have your notes of the
22 direct and if you, - if it is important
23 enough, we could have Mr. Knisley transcribe
24 his direct testimony so you would have it.
25 You do have the charts and those will be

1 made available to you so you can talk to
2 her about the charts.

3 MR. WILLIAMS: I have no objection to that.

4 THE COURT: Anything further at this time?

5 MR. WILLIAMS: Not of this witness other than to
6 make offers in evidence of certain docu-
7 ments and writings.

8 THE COURT: Very well.

9
10 (Sidebar conference concluded.)

11
12 MR. LAMANTIA: Excuse me. That motion is denied?

13 THE COURT: Yes, your motion is denied. As I
14 understand, that will be all of Mr. Sang
15 for now.

16 MR. WILLIAMS: Yes, your Honor.

17 THE COURT: Will there be any further witnesses
18 this afternoon?

19 MR. WILLIAMS: Well, the only other witness would be
20 I would recall Mr. Traub on the specimen
21 writing.

22 THE COURT: Very well. Ladies and gentlemen,
23 then that concludes your work for today
24 and you are now in recess until this
25 coming Monday. We will make it 11:00

1 not appear that what bad she knows is part
2 of this insurance claim so that you have
3 to go ahead in these cases on evidence and
4 there is no evidence here, so I will grant
5 the motion as to Kate Cook.

6 MR. ABRAMOWITZ:

Thank you, your Honor.

7 THE COURT:

8 Thank you, Mr. Abramowitz, for your
9 services in this case. Kate Lee Cook, you
10 are discharged and you may leave. Mrs.
11 Cook, you should leave the table before I
12 change my mind. Anyone else? Mr.
Lamantia.

13 MR. LAMANTIA:

May it please the Court, your Honor -

14 THE COURT:

15 Mr. Abramowitz, can you go quietly.
All right, Mr. Lamantia.

16 MR. LAMANTIA:

17 May it please the Court, your Honor,
18 at this time, on behalf of the Defendant
19 Mary Jean Askew, I am making a motion
20 for judgment of acquittal under Rule 29(a),
21 on the following grounds; there are 12
22 counts of this indictment that relate to
23 the defendant Mary Jean Askew. Three of
24 them are conspiracy counts, Counts 1, 13
25 and 58. The other remaining nine counts
are under the fraud and swindle or mail

1 fraud section, 18, Title 18, Section 1341.
2 With respect to those counts, first the
3 mail fraud counts, the substantive charges
4 in the indictment relating to them, and
5 I will take Count 10 first because it is
6 a briefer count. Count 10 which is on
7 page 10 charges that the defendant Mary
8 Jean Askew mailed form LO 406.1 to the
9 New York State Department of Labor
10 verifying that she was unemployed between
11 a given period of time. As Mr. Abramowitz
12 just made the argument, this is the only
13 factual allegation that they are making
14 in this count against the defendant Mary
15 Jean Askew, is that she mailed form
16 LO 406.1. The testimony is uncontroverted
17 by the Government's witness, Mr. Julius
18 that forms LO 406.1 which is a claim for
19 benefit payment or a pay order is not
20 mailed, it is never mailed, it is filled
21 out at the unemployment office. In fact,
22 that form has the language on it, "Sign
23 here in presence of claims taker" and that
24 this is always done as part of their
25 procedure that they would not accept this

1 particular form LO 406.1 to be mailed in,
2 so with respect to Count 10 of the indict-
3 ment, it is factually incorrect that Mary
4 Jean Askew mailed form LO 406.1, and I
5 would ask dismissal of that count.

6 THE COURT:

7 Mr. Williams, let us take those one
8 by one. Any evidence here that she mailed
9 this form?

10 MR. WILLIAMS:

11 There is no evidence that she mailed
12 the LO 406.1. Mr. Lamantia is correct in
13 that regard. The count also goes on to
14 say that between certain dates, she re-
15 ceived unemployment insurance checks in the
16 name of Willie S. Middleton, and as the
17 Court recalls on several of these checks
18 we have the handwriting expert who says
19 the second endorsement "Willie S. Middleton"
20 was placed on there by Mary Jean Askew and
21 certainly, there is no question the indict-
22 ment should read, the forepart of that
23 indictment should read that Mary Jean
24 Askew caused the form to be mailed by
25 filing the claim in the first instance and -

THE COURT:

Didn't Mr. Julius tell us that these
forms were never mailed?

1 MR. WILLIAMS:

That is correct, there is no question.
2 With the LO 6, with respect to the
3 LO 406, the procedure is, according to
4 Mr. Julius, that the claimant must appear
5 in the New York State Unemployment Office
6 and sign that form and the State then
7 mails that down to Albany and that is the
8 basis upon which checks have been issued
9 to the claimant.

10 MR. LAMANTIA:

Well, your Honor - -

11 MR. WILLIAMS:

With respect to that, I maintain that
12 certainly with respect to mail fraud,
13 there need not be any showing that the
14 defendant did the mailing himself.

15 THE COURT:

Wait a minute. Let us take one thing
16 at a time. Mr. Julius said the LO 406 was
17 never mailed. You have no evidence here
18 that Mary Jean Askew mailed it so that is
19 out. Let us stop talking about that
20 part, right.

21 MR. WILLIAMS:

That she caused it to be mailed.

22 THE COURT:

How could she cause it to be mailed
23 if it is never mailed? Do we have
24 evidence here? What evidence do you have
25 that she caused it to be mailed?

1 MR. WILLIAMS:

2 The evidence that she caused it to
3 be mailed is that once the claimant comes
4 into the office and signs that LO 406,
5 the State then mails that down to Albany
6 and the New York State Department of Labor
7 at Albany then issues and draws a check
8 and mails it back to the claimant. What
9 I am maintaining is that - -

10 THE COURT:

11 Of course, this does not apprise the
12 defendant of what you are going to prove
13 in the evidence when you say "caused to
14 be mailed", that is one thing and mailing
15 it is something else.

16 MR. LAMANTIA:

17 The language of the statute is,
18 "or knowingly causes to be delivered by
19 mail according to the direction thereon."
20 At one point in my cross examination of
21 Mr. Julius, I took one of these LO 406.1's
22 and read the language thereon. There is
23 nothing on that form that gives a person
24 who signs it any indication that that form
25 is going to be mailed to Albany or anywhere
else. As far as the person who is signing
that form in the office knows that it is
going to remain in that office. There is

1 said that, if that was the only part of it,
2 that they file a claim and then caused the
3 checks to be mailed, it would be something
4 else again, but here you charge too much.

5 MR. WILLIAMS:

The original claim for benefits
6 itself is never mailed. The person goes
7 to the office and fills that out and that
8 stays at the office.

9 THE COURT:

I am not talking about that.

10 MR. WILLIAMS:

I am sorry.

11 THE COURT:

I am talking about the fact that now
12 that you have charged it and as far as
13 can find from the evidence there would be
14 no way she would ever know that this was
15 going to be mailed to anybody. I will
16 reserve briefly on that. I will rule on
17 this in a few minutes. Let us hear some
18 of the others.

19 MR. LAMANTIA:

Also on that same count that Mr.
20 Williams says in addition to the mailing
21 of the form LO 406.1, the count says that
22 Mary Jean Askew received via the mails
23 from the New York State Unemployment
24 Insurance Fund unemployment insurance
25 checks in the name of Willie S. Middleton.

1 or Terry Mitchell where handwriting an-
2 alysis shows that the signature T.
3 Mitchell or Terry Mitchell was placed on
4 there by Mary Jean Askew. Each of those
5 checks was negotiated.

6 THE COURT:

All right.

7 MR. LAMANTIA:

8 'Your Honor, at best, it is my con-
9 tention that the Government's proof would
10 show either a forgery or a larceny
11 punishable under State Law, but does not
12 make out the crime of mail fraud under
13 Section 1341.

14 THE COURT:

All right. Mr. Lamantia, there are
some other counts?

15 MR. LAMANTIA:

16 Yes. Your Honor, under, - I think
17 we can go back, Count 1 which charges
18 Mary Jean Askew with conspiracy there are
19 twenty-one overt acts charged under that
20 count. Overt Act 3 claims that the
21 Defendant Mary Jean Askew mailed, once
22 again, a certification that she was still
23 unemployed. That is a form LO 406.1.

24 THE COURT:

Excuse me. Let me do this a different
25 way. Mr. Williams, what evidence do you
have that there was a conspiracy here,

1 that is, a plan on the part of Mary Jean
2 Askew? What I am thinking of, I am
3 thinking of the testimony of Mr. Raspberry
4 who told us that he went with Mr. Cook
5 into various places and they got numbers
6 and they did this and that. I cannot
7 recall him saying anything about Mary Jean
8 Askew.

9 MR. WILLIAMS:

There is no testimony with respect
10 to, - nobody testifies that there was an
11 actual conspiracy existing or there was an
12 agreement existing. Again, simply by the
13 overt acts as to what each one of them
14 is doing, one is making a claim, the other
15 is verifying the employment, checks are
16 issued, some other defendants are second
17 endorsing checks and that is the pattern
18 throughout.

19 THE COURT:

All right. Mr. Lamantia.

20 MR. LAMANTIA:

Once again, your Honor, with respect
21 to Counts 1 and 13 and 58 which allege
22 conspiracy involving the defendant Mary
23 Jean Askew, I feel there has been no
24 proof that she was involved in any con-
25 spiracy. There have been certain overt

1 verified that Terry Cole was employed
2 by him, and again by handwriting the
3 defendant Toliver signed various LO
4 406's, claim for benefit forms and
5 received numerous checks, where the
6 second endorsement was placed on there
7 by him. Those checks were negotiated
8 and cleared through the State Bank at
9 Albany. There is also a Regiscope
10 Photograph depicting a negro male and
11 a check and I submit that that is for
12 the jury's consideration as to the
13 defendant Louis Toliver, but certainly
14 again, these claims are made in false
15 and fictitious names. This could not
16 be done without an agreement to do it.

17 THE COURT:

In this case you say there is
evidence which shows participation of
Elgin Cook?

18
19 MR. WILLIAMS:

At least between Elgin Cook and
Louis Toliver.

20
21 THE COURT:

Do you have evidence in this as
to the participation of Mary Jean Askew
as to any of the claims Mr. Toliver
participated in?

1 MR. WILLIAMS: No, not with Mary Jean Askew, but
2 there again I submit the law is clear.
3 THE COURT: Are there two conspiracies charged
4 in this Count or just one?
5 MR. WILLIAMS: There is just one conspiracy
6 charged.
7 THE COURT: We heard the argument with Mr.
8 LaMantia. You said that the conspiracy
9 proven was between, as I recall it,
10 between Mary Jean Askew and Mr. Cook.
11 Now it is between Toliver and Cook.
12 MR. WILLIAMS: Well, Number 1 - -
13 THE COURT: What is the connection between
14 Toliver and Askew?
15 MR. WILLIAMS: Your Honor, what the situation is
16 is this, that there are several conspira-
17 cies charged. It is not one overall
18 conspiracy.
19 THE COURT: I am just looking at this particu-
20 lar conspiracy, Count 13.
21 MR. WILLIAMS: All right. I have no proof that
22 Elgin Cook, - I have no proof that Mary
23 Jean Askew and Louis Toliver conspired
24 together, but again I submit that there
25 is no requirement that each conspirator

1

know the other conspirator as long
as they know the overall scheme.

2

3

THE COURT:

You have to prove something
circumstantially. Do you show any tie-
in through documents?

4

5

6

MR. WILLIAMS:

Not between Mary Jean Askew and
Louis Toliver, no.

7

8

THE COURT:

Why did you charge them in one
conspiracy then?

9

10

MR. WILLIAMS:

Well, for the simple reason it is
my understanding of the law that it is
not a requirement to show that each
defendant knew the other defendant in
a conspiracy.

11

12

13

14

15

THE COURT:

No, but you had to have some
common purpose, scheme, plan. You just
cannot say "filing of unemployment
insurance claims". In the claims
themselves is there anything inherent
in the claims which points to the
participation of Toliver, Askew and
Cook all in these forms that you have
here?

16

17

18

19

20

21

22

23

24

MR. WILLIAMS:

Yes.

25

THE COURT:

Explain it to me.

1 MR. WILLIAMS:

What is inherent in these claims
2 is that each of the defendants, Toliver,
3 Askew, McClendon, and Raspberry filed
4 claims alleging that they worked for
5 Cook Auto Care during certain periods
6 of time. They filed those claims using
7 false and fictitious names. The
8 defendant Elgin Cook verified that each
9 one of those defendants under the false
10 and fictitious name worked for him.
11 There is the connection.

12 THE COURT:

Including Toliver?

13 MR. WILLIAMS:

Including Toliver.

14 THE COURT:

All right, so that the connecting
15 point here is Cook's Auto Care then,
16 is that your point?

17 MR. WILLIAMS:

Elgin Cook and Cook's Auto Care,
18 that is correct.

19 THE COURT:

All right. We find out at least
20 your point of view. Mr. Walsh, anything
21 further to be said on these?

22 MR. WALSH:

No, your Honor.

23 THE COURT:

Count 14?

24 MR. WALSH:

Count 14, yes, and that is a
25 repetition of the last Count charging

1 PROCEEDINGS: January 5, 1976, 3:04 p.m.

2 APPEARANCES: As before noted.

3

4 (Defendants present.)

5 (Jury not present.)

6

7 THE COURT:

8 We will proceed to rule on the
9 motions made at the conclusion of the
10 Government's case. We have had discussion
11 here about the pleading of the Government.
12 It appears to me in some instances it
13 could have been stated in a clearer
14 fashion but over all in considering the
15 cases cited, and I might say, Mr. Williams,
16 again that I looked at the cases cited
17 and they were for the most part not very
18 appropriate to the argument but in each
19 case I will deny the motions.

20 I might comment briefly on one or
21 two points. The argument on count one
22 where the language "and in furthering
23 such scheme or device by means of using
24 false and fictitious names and addresses",
25 it seems to me that the Government in
the main portion of the charge had let

1 sometime in November or December of 1969
2 and all these claims for employment
3 benefits on Cook and Green Car Wash show,
4 or the proof will show were made sometime
5 in '71, '72, and showed work for Cook and
6 Green during the year 1970. Very basically
7 from about January 1970 to January 1971
8 when that car wash was not in existence.

9 Similarly with Cook Auto Care, 83
10 Brunswick Boulevard. There again as the
11 proof will show, as the proof has showed,
12 83 Brunswick Boulevard was never a car
13 wash. There was one at 18 Eagan Drive
14 which was Cook and Green but never at
15 83 Brunswick Boulevard.

16 Now, the Court will instruct you on
17 what the law is but just on one very
18 simple point, I am sure the Court will
19 tell you there are two kinds of evidence,
20 what we call direct evidence or circumstan-
21 tial evidence. Now, this case is primarily
22 no question about it, circumstantial
23 evidence. In other words, there is not
24 one witness that took the stand with the
25 exception of perhaps George Raspberry and

1 Otis Pender who has said "I saw defendant
2 so and so come down to the Unemployment
3 Office and I saw them make this claim",
4 et cetera, et cetera. There is not that
5 kind of evidence. As I said for the most
6 part, most of it is circumstantial.
7 Generally speaking, the law doesn't make
8 any difference between circumstantial and
9 direct. The Government is obligated
10 certainly to prove its case by a prepon-
11 derance of the evidence beyond a reasonable
12 doubt and the Government accepts that
13 burden and I am convinced and I will
14 demonstrate to you that each of these
15 defendants in my opinion is guilty beyond
16 a reasonable doubt.

17 MR. LAMANTIA:

I am going to object to that remark
by the prosecutor as to what his opinion
is.

20 THE COURT:

21 All right. I am sure that certainly
22 Mr. Williams cannot express his opinion
23 as to the evidence. He cannot be a
24 witness and I am sure if he did it, it
25 was inadvertent and it should be disregarded
by you. You may continue, Mr. Williams.

1 Therefore, I am going to dismiss Counts, -
2 I wonder if you will follow, please, Mr.
3 Williams, so we make sure we have it
4 accurate. Again, as Mr. Lamantia
5 indicated, it is only my intent here to
6 dismiss counts involving this type of
7 form, LO 406.1 which the evidence shows
8 in the case was carried in by the person
9 to the employment office. My calculation
10 indicates, and if you will follow along
11 with me, 21, 24, 28, 47.

12 MR. WALSH:

Was that 47, your Honor?

13 THE COURT:

47, 49.

14 MR. WALSH:

Wait a minute.

15 THE COURT:

54, 56, 62, 66, 69. I think, Mr.
16 Lamantia, that takes care of all of
17 them and if I am incorrect, let me know.

18 MR. WILLIAMS:

Judge, that is the same record I
19 have. I went over it last night and
20 those are the counts I came up with.

21 MR. LAMANTIA:

- Your Honor, I realize this doesn't
22 go to the entire count, but certainly,
23 the conspiracy count under the overt acts,
24 one of the overt acts that are claimed
25 is the mailing of that particular form.